

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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Douglas A. Kelley, in his	)	File No. 19-cv-1756
capacity as the Trustee of the	)	(WMW)
BMO Litigation Trust,	)	
	)	
Plaintiff,	)	St. Paul, Minnesota
	)	October 28, 2022
vs.	)	8:39 a.m.
	)	
BMO Harris Bank N.A., as	)	
successor to M&I Marshall and	)	
Ilsley Bank,	)	
	)	
Defendant.	)	

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BEFORE THE HONORABLE WILHELMINA M. WRIGHT  
UNITED STATES DISTRICT COURT JUDGE

**(JURY TRIAL PROCEEDINGS - VOLUME XIII)**

Proceedings reported by certified court reporter;  
transcript produced with computer.

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I N D E XPAGE**CHARLES GRICE**

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**P R O C E E D I N G S**

**IN OPEN COURT**

**(JURY PRESENT)**

THE COURT: Good morning. Please be seated.

MR. SCHAPER: Good morning, Your Honor.

THE COURT: Good morning.

MR. SCHAPER: May I approach with some exhibits  
for the next witness?

THE COURT: You may.

(Binders handed to witness and the Court)

MR. SCHAPER: Your Honor, defendant calls as its  
next witness Mr. Charles Grice.

COURT REPORTER: Please come forward and stop in  
front of me. Would you raise your right hand to be sworn,  
please.

(Witness sworn)

COURT REPORTER: You can have a seat in the  
witness stand. Speak into the microphone and state your  
name, spelling your first and last name, please.

THE WITNESS: Certainly. It's Charles H. Grice,  
G-r-i-c-e.

THE COURT: Counsel, you may proceed.

Mr. Grice, if you would like to adjust the  
microphone, you may.

MR. SCHAPER: Thank you, Your Honor.

Grice - Direct

THE COURT: You're welcome.

(Charles Grice)

**DIRECT EXAMINATION**

BY MR. SCHAPER:

Q. Good morning, Mr. Grice.

A. Good morning.

Q. Could you please again introduce yourself by name to the members of the jury.

A. Charles Hamilton Grice.

Q. What do you do for a living, Mr. Grice?

A. I'm a consultant to banks.

Q. And what is your current job title?

A. I'm the managing director of a firm I created in 1988.

Q. What's the name of that firm?

A. CRI Compliance, LLC.

Q. And what business is CRI in?

A. The words we use, we advise banks on risk management, but we specialize in high-risk compliance problems for the banking industry.

Q. And does CRI advise financial institutions?

A. Primarily.

Q. What types of institutions?

A. Primarily banks of the size of M&I, so this kind of midsized regional banks; not the giant ones and not the small ones, the midsized.

Grice - Direct

1 Q. And a little more specifically, what kind of consulting  
2 work does CRI provide?

3 A. We have done two primary issues over the course of the  
4 34 years we've been in business. The first is this topic,  
5 Bank Secrecy Act, anti-money laundering, and all the related  
6 laws and regulations.

7 And the second is the process of mortgage lending,  
8 the issues that are -- surround mortgage lending; consumer  
9 rights, the quality of mortgage loans, those kinds of  
10 things.

11 Q. And just in brief, we've heard some about it, but what  
12 is the Bank Secrecy Act that you just mentioned?

13 A. The Bank Secrecy Act is the law that was passed in 1970  
14 primarily to address the problem of dirty money from drug  
15 trafficking entering the financial system, and it's  
16 broadened over the last 35 or 40 years. So it now is almost  
17 unrecognizable from its original form, but it's now a family  
18 of laws, regulations, and instructions.

19 Q. Okay. Mr. Grice, let's take a step back. If you could  
20 please describe your educational background starting after  
21 high school for the jury.

22 A. I'll try to remember. I attended college at a place  
23 called Johns Hopkins University in Baltimore and studied --  
24 the field was international studies, but it was really  
25 development economics. I was trying to understand why some

Grice -- Direct

1 countries are rich and others were poor.

2 I then went to Georgia Washington University in  
3 Washington, D.C. and did two years of graduate school in  
4 economics under a scholarship from the Federal Reserve.

5 And then did a year in Brazil going to graduate  
6 school studying the Brazilian financial system. I was a  
7 Fulbright scholar, so the U.S. government sent me there.

8 I came back and did two years at the Kennedy  
9 School of Government -- it's now called the Harvard School  
10 of Government -- and got a master's degree in public policy.

11 And then the last thing I did was a three-year  
12 fellowship courtesy of the Kellogg Foundation of Battle  
13 Creek, Michigan. So I spent three years pursuing a variety  
14 of questions, mostly about the effects of technology on  
15 things like banking and low-income neighborhoods. Is there  
16 some way to help low-income neighborhoods with better  
17 internet connection, but keep in mind this was 35 years ago,  
18 so that was a long time ago.

19 Q. Mr. Grice, have you prepared a set of demonstrative  
20 exhibits to aid your testimony today?

21 A. I have, yes.

22 Q. And does one of them cover your professional background?

23 A. Yes.

24 MR. SCHAPER: That is -- that exhibit is without  
25 objection, so I would ask if we can put up DD-60 and

Grice - Direct

1 slide 0.

2 BY MR. SCHAPER:

3 Q. Mr. Grice, when did you begin your career in banking?

4 A. Technically it was a summer job, and then a job during  
5 the school year when I was an undergraduate, so in 1978 at a  
6 credit union at Johns Hopkins.

7 And then I had a variety of summer jobs in  
8 banking. One of them was at Bankers Trust, which is now  
9 called Deutsche Bank.

10 And then officially got into the banking business,  
11 I guess, in 1986 when I went to work for the California  
12 Bankers Association training bank CEOs on new laws and  
13 regulations. This was right after the passage of part of  
14 the Bank Secrecy Act.

15 And then in '88 --

16 Q. Can I stop you there?

17 A. Of course.

18 Q. Mr. Grice, at some point did you spend some time at the  
19 Federal Reserve Board?

20 A. I did. Yes, I spent two years at the Federal Reserve  
21 really right -- well, I did a year at the Senate Banking  
22 Committee right out of college, and then went to the Federal  
23 Reserve for two years. So I got to see the laws that we had  
24 adopted in the Senate get turned into regulations that were  
25 enforced or implemented by the Federal Reserve.



Grice - Direct

1 Q. And sorry. I interrupted you. And I think you were on  
2 to 1988. What did you do then?

3 A. So in 1988, I left the California Bankers Association;  
4 and with the support of some of those bank presidents,  
5 created what is now CRI to help banks understand and comply  
6 with what I guess I would consider then were high-risk  
7 regulations and laws, the Bank Secrecy Act in particular,  
8 and then the laws around racial discrimination were called  
9 fair lending laws. Those were the original foci or the  
10 original focus of CRI.

11 Q. Did your work for the Senate Banking Committee and the  
12 Federal Reserve Board and the California Bankers Association  
13 inform your opinions today?

14 A. It did. It contributed a lot. I got to see an idea of  
15 legislation coming out of a senator's mind get turned into a  
16 rule that was implemented by a federal agency, and then I  
17 got to see how the real world wrestled with those sometimes  
18 incomplete or unclear or ambiguous instructions. So I got  
19 to see all parts of the life of a regulation.

20 Q. As part of your consulting work, Mr. Grice, have you  
21 ever been asked to serve in a role inside a bank?

22 A. I have. So six times in my consulting life since 1988  
23 I've been inserted into banks at the behest or at the  
24 instruction of the government after they've removed an  
25 employee from the bank for malfeasance, fraud,

Office - Direct

1 nonperformance. So six times I've been appointed by an  
2 agency and then the board of directors of the bank to be the  
3 chief compliance officer or the chief risk officer or in one  
4 case both.

5 Q. And in broad terms, in those six assignments, is your  
6 job to kind of turn around the compliance function at a  
7 bank?

8 A. Yeah, I would step into banks of the size and complexity  
9 of M&I after a tough exam where there's a big to-do list of  
10 items to be fixed, and I would work myself out of a job.  
11 And part of my assignment was also to find a replacement.  
12 So I would keep the seat warm. I would perform all the  
13 duties and responsibilities of that federal examination and  
14 then leave.

15 Q. And, to your knowledge, were those assignments  
16 successful?

17 A. All of them, yes.

18 Q. Were any of those roles where you worked inside a bank  
19 as chief compliance officer during the 2002 to 2008 time  
20 period?

21 A. Two of them -- I'm sorry, three of them were during this  
22 2002 to 2008 time frame, again of banks that are competitors  
23 to M&I, similar size, similar complexity, a couple of  
24 states, you know, 10 or 20 or 30 billion dollars in assets.

25 Q. Did that -- did those roles involve hiring or

Office - Direct

1 supervising AML analysts?

2 A. They did.

3 Q. And when you were in those roles, was your work subject  
4 to scrutiny by the government?

5 A. Both -- yes. Both the annual examination that my --  
6 that basically every bank gets of this size for BSA and also  
7 I had a contractual relationship with the federal agency  
8 that sent me in there. My bills were paid by the bank, but  
9 my supervisor was the Federal Reserve or the OCC.

10 Q. So given that the Federal Reserve was supervising your  
11 work, did you have interaction with the Federal Reserve in  
12 terms of how to carry out your role?

13 A. If not daily, certainly weekly. Yeah, it was a very  
14 close supervision by the agencies.

15 Q. And did those interactions with the government at the  
16 time, 2002 to 2008, inform your opinions today about what  
17 regulatory expectations were at the time?

18 A. Yeah, it gave me a real understanding for a lot of the  
19 documents we have seen in this trial and a lot of the  
20 witnesses we've heard from. So it informed my  
21 understanding. It gave me the context. So when I listened  
22 to Kelley Maltsch yesterday, I understood exactly what she  
23 was referencing because I had been in not an identical, but  
24 almost identical conversation with my federal supervisor  
25 during the same frame.

Grice - Direct

1 Q. And do those interactions inform your opinions about  
2 whether M&I's AML analysts carried out their duties  
3 appropriately?

4 A. Yes.

5 Q. About how many banks have you consulted on BSA/AML  
6 compliance over the course of your career, Mr. Grice?

7 A. I don't have an exact count, but it's well over 125 over  
8 the 35 years.

9 Q. So we've talked about your consulting work for banks.  
10 Have you ever performed consulting work for any regulatory  
11 or government agencies?

12 A. I've done two expert witness assignments like my  
13 appearance here today where I was hired by the Department of  
14 Justice, the anti-money laundering section or the anti-fraud  
15 section, on bank matters. One was a Ponzi case and the  
16 other was a pyramid scheme, but very similar. So the client  
17 was the Department of Justice.

18 And then I've trained and advised the federal  
19 banking supervisors, the Federal Reserve, the OCC and the  
20 FDIC. But in terms of formal consulting arrangements, it's  
21 the Department of Justice.

22 Q. I think you just made a reference to this, but do you  
23 have specific experience when it comes to financial  
24 institutions where Ponzi schemes have been identified?

25 A. Yes. I've worked I think on 12 or 15 litigation

Office - Direct

1 assignments that are Ponzi schemes, or things that I think  
2 people would call Ponzi schemes, and then another 15 or 20  
3 that are complex financial frauds. I'm hesitating because I  
4 work on Enron for a couple of years. Enron was not a  
5 classic Ponzi scheme, but it was a very complex series of  
6 financial frauds.

7 Q. We've heard a number of times throughout this trial  
8 about the Madoff Ponzi scheme that collapsed in late 2008 or  
9 early 2009. Did you have any role with respect to the  
10 Madoff matter?

11 A. I wasn't part of it. I wasn't --

12 Q. I wasn't suggesting that.

13 A. No, by coincidence, I was in south Florida the day that  
14 Mr. Madoff confessed, and I went to his country club the  
15 next morning because I was curious. I'm kind of a  
16 regulatory nerd. I wanted to see what I could learn, and a  
17 lot of the victims purportedly were coming from the country  
18 club.

19 So my first day I went to the country club and I  
20 talked to the victims and looked at their documents. Later  
21 I was invited to join a thing that was called the Madoff  
22 coalition, I believe was the name of it. It was a  
23 collection of about 100 law firms from around the world that  
24 represented both victims of Madoff and also bank defendants,  
25 banks that were involved in Madoff. That lasted about a

Grice - Direct

1 year before I resigned.

2 And then maybe two or three years after that, I  
3 did a litigation assignment for a couple of families from  
4 Latin America who had invested through a French bank into  
5 one of the Madoff controlled funds. So I've seen Madoff  
6 from different sides.

7 Q. How long have you been working in the banking industry,  
8 Mr. Grice?

9 A. Since 1978, but with long pauses for school and other  
10 jobs.

11 Q. Have you developed any areas of expertise in the banking  
12 industry during your decades-long career?

13 A. The nerd word that we use in the banking industry is  
14 internal controls, but the subject matter is Bank Secrecy  
15 Act compliance, fraud prevention, and then this family of  
16 laws around racial discrimination, mortgage discrimination,  
17 redlining, fair lending, the Community Reinvestment Act --  
18 believe it or not, these are all the same thing -- and then  
19 the techniques of how to make a mortgage loan properly.

20 Q. Have you ever been asked to teach courses about bank  
21 regulatory compliance matters?

22 A. Yes.

23 Q. Just -- I don't need an exhaustive list, but can you  
24 give an example of some of the entities that have asked you  
25 to teach courses on that subject?

Grice - Direct

1 A. I think I have spoken at every national meeting and most  
2 of the regional meetings and even most of the state trade  
3 association meetings. Kelley Maltsch yesterday was  
4 referencing I think the Wisconsin Bankers Association. I  
5 don't think I appeared there, but I have done the American  
6 Bankers Association, American Bar Association, international  
7 groups outside the United States. I've trained OCC  
8 examiners on BSA issues, state regulators.

9 Q. Mr. Grice, did you include a copy of your resumé as part  
10 of your expert report in this case?

11 A. I did, yes, sir.

12 MR. SCHAPER: Your Honor, defendant offers into  
13 evidence DX-50902, which is the excerpt from Mr. Grice's  
14 report that is his resumé. We don't intend to publish it  
15 now, but rather just so it's available to the jury.

16 MR. ANTHONY: Your Honor, I think -- no objection.  
17 All the resúmes have been admitted, so no exception here.  
18 No objection.

19 THE COURT: It is received.

20 MR. SCHAPER: Thank you.

21 BY MR. SCHAPER:

22 Q. Mr. Grice, have you ever been asked to testify as an  
23 expert witness before?

24 A. I have, yes, sir.

25 Q. About how many times have you testified at trial?

Grice - Direct

1 A. More than a dozen. So maybe 13 or 14.

2 Q. Have you testified on BSA/AML issues?

3 A. Yes, and at least three or four of those have been  
4 focused not as brightly as this case, but where BSA was a  
5 major part of the case.

6 Q. And as part of that, have you ever testified as an  
7 expert on a bank's compliance with "know your customer"  
8 requirements?

9 A. Yes, in each of those.

10 Q. Mr. Grice, when you've testified in courts, has it  
11 always involved testifying on behalf of a bank?

12 A. No. I've done -- I've probably had a hundred litigation  
13 assignments in my career, separate from the consulting we  
14 talked about. Of those, say, 15 are BSA-related litigation  
15 assignments. Of those 15, at least five or six were adverse  
16 to banks. So I was hired by plaintiffs to sue banks.

17 Q. So in your work, sometimes you've testified on behalf of  
18 plaintiffs and sometimes you've testified on behalf of  
19 defendant banks; is that correct?

20 A. That's correct. In the two assignments for DOJ, I'm  
21 clearly on behalf -- these were criminal matters where I'm  
22 on behalf of the U.S. Government against banks or bankers.

23 Q. Has there ever been a situation in which you were asked  
24 to give an opinion about a bank's BSA/AML program and you  
25 chose not to?



Grice - Direct

1 A. Yes. There have been four instances in my career in  
2 this subject in BSA where I was asked to opine on the  
3 quality of somebody's compliance program, for example, and  
4 in both litigation and consulting where I didn't feel  
5 comfortable with what I was seeing and I withdrew. So we  
6 signed engagements letters, I got the documents, and I  
7 withdrew.

8 Q. Have you ever been disqualified as an expert witness,  
9 Mr. Grice?

10 A. No, sir.

11 MR. SCHAPER: Your Honor, defendant offers Charles  
12 Grice as an expert in the field of banking and bank  
13 regulatory compliance.

14 MR. ANTHONY: No objection, Your Honor.

15 THE COURT: He is received as such.

16 MR. SCHAPER: Thank you, Your Honor.

17 BY MR. SCHAPER:

18 Q. Mr. Grice, which party retained you in this case?

19 A. Counsel for BMO, for BMO Harris.

20 Q. And is your work on this case related to BSA/AML issues?

21 A. Very much so, yes, sir.

22 Q. Before we get to those areas, are you being compensated  
23 for your role in the case?

24 A. I am, yes, sir.

25 Q. Just generally, what's the structure of that

Office - Direct

1 compensation? Is it hourly or --

2 A. I'm paid hourly, and I'm also paid a 10 percent share or  
3 commission for the work of people I supervise. So I've been  
4 supported by others in this engagement.

5 Q. And what is your hourly rate?

6 A. It's now 950 an hour. It was 850 I think when I  
7 started.

8 Q. Is your compensation for this case contingent on the  
9 nature of the opinions you give?

10 A. No.

11 Q. Is it contingent on the outcome of this case?

12 A. No.

13 Q. Has your compensation impacted your professional opinion  
14 in any way in today's case?

15 A. Not at all.

16 Q. You said a moment ago that you were retained to -- in  
17 connection with BSA/AML compliance issues. Have you also  
18 prepared a demonstrative that covers what questions you were  
19 asked to look into in this case?

20 A. Yes, sir, I have.

21 Q. If we could please go to slide 1. Can you just explain  
22 what you were asked to look at.

23 A. It was five seemingly simple questions, trying to look  
24 at the conduct of the bank with the PCI account in a very  
25 specific time frame. Obviously the account ended -- or the

Grice - Direct

1 Petters scheme ended in 2008. So I was looking at first the  
2 policies and procedures of the bank, so did the bank have  
3 the kinds of required elements of a compliance program that  
4 a bank should have had at this time frame from '02 to '08;  
5 whether the conduct of the bank with respect to PCI was  
6 consistent with those policies and procedures.

7 One of the bigger issues was this question of red  
8 flags and were there any red flags in the PCI account that  
9 showed fraud that the bank should have seen, again, given  
10 the information available at the time.

11 Fourth was did any employees -- I'm sorry. Did  
12 any employees at M&I behave in a way that was consistent  
13 with conspiring with a fraudster, which I've seen before.

14 And then --

15 Q. And then the last one references plaintiff's expert, who  
16 we heard from earlier in the case, Ms. Ghiglieri. What does  
17 that item refer to?

18 A. I was asked to address -- I wrote my original report  
19 before Ms. Ghiglieri had filed her report, and then I was  
20 asked to respond to the criticisms she raised in her report  
21 back in 2018.

22 Q. Mr. Grice, were you able to reach a conclusion on each  
23 of these areas that you looked at?

24 A. Yes, sir, I was.

25 Q. Did you issue written reports in this case?

Grice - Direct

1 A. Two reports in early 2018 and then mid 2018.

2 Q. Did anyone help you with those reports?

3 A. Yes, sir, I was supported by three people from my office  
4 at CRI, and then a team of analysts at a firm called  
5 Analysis Group.

6 Q. At a very high level, Mr. Grice, can you just describe  
7 how they helped you.

8 A. So the three folks from my shop that helped were all  
9 former bank examiners, so people who did BSA exams in the  
10 past and had experience. They were fluent in Bank Secrecy  
11 Act issues.

12 And then the team at Analysis Group helped me --  
13 I'm not a lawyer. I don't understand legal productions very  
14 well. There's a special language. This is a very special  
15 world. They helped me find the documents I was looking for  
16 inside the production, which was, without a doubt, one of  
17 the largest I've ever seen.

18 Q. So you had some help in this case, Mr. Grice, but were  
19 the opinions that you formed in this case entirely your  
20 opinions?

21 A. Entirely my own, yes, sir.

22 Q. Before we get to your conclusions, I would like to just  
23 discuss with you what your approach was in reaching them.

24 Was there anything, Mr. Grice, that was especially  
25 difficult about working on an assignment that involved

Grice - Direct

1 events that took place as long as 20 years ago?

2 A. Yes. Most of my consulting work is in real time. I'm  
3 dealing with ongoing frauds or ongoing misconduct in real  
4 time, so I can talk to people, I can see documents as  
5 they're unfolding. Here we had the passage of 20 years. So  
6 it was a challenge to do this analysis without suffering  
7 from this kind of -- a kind of blindness that comes. We  
8 forget what life was like 20 years ago. We forget what we  
9 knew and didn't know 20 years ago, so the challenge of time  
10 was a serious one.

11 Q. Is there a name for the concept you are talking about?

12 A. Yes, hindsight bias I have heard a lot of in this  
13 courtroom, and it's certainly, I think, one of the biggest  
14 challenges in this assignment is how to reconcile it, how to  
15 deal with it.

16 Q. And how, in your view, does the concept of hindsight  
17 bias come into play in this case where we're looking at  
18 events between 2002 and 2008?

19 A. It's a serious challenge to set aside what you've  
20 learned after Petters -- after the FBI raid and Mr. Petters  
21 was arrested and then the criminal trial. It's just very  
22 hard to set that aside and not know it as you read these  
23 documents.

24 And so I worked really hard to make sure I was  
25 applying the standards that were in effect at the time and

Grice - Direct

1 the bank's conduct at the time without that certain  
2 knowledge of what was going to happen in the future.

3 Q. And did you prepare a slide that talks about your  
4 approach?

5 A. Yes, sir, I did.

6 Q. If we could please move to slide 2. Can you just  
7 explain for the jury what you're talking about here in terms  
8 of your approach, Mr. Grice.

9 A. So I've been in this courtroom for all but two days, so  
10 I'm talking to the converted here. This is a case very much  
11 about the regulatory context that was in place at the time  
12 and the bank's actions with the PCI account at the time.

13 So I tried to look at both of these aspects using  
14 documents and guidance and instruction from the government  
15 and information inside the bank from the time period.  
16 Again, setting aside this knowledge that comes from reading,  
17 you know, the Ted Martens report at PwC, which answers a lot  
18 of questions. If you don't know what happens in September  
19 2008, it gives you a different understanding of the  
20 documents that preceded that.

21 Q. And just at a very high level because we'll cover this  
22 in more detail later, but at the time pre-September 2008 to  
23 -- 2002 to 2008, just what was the regulatory context, just  
24 very high level?

25 A. It was very different. I mean, an example of this

Grice - Direct

1 hindsight bias is trying to remember what life was like at  
2 an airport before 9/11. In this assignment, Ponzi schemes  
3 and this kind of complex fraud was not top of mind for  
4 federal government regulators and therefore for their  
5 bankers. And so --

6 Q. What was top of mind?

7 A. Really the twin issues of this old-fashioned narcotics  
8 trafficking dirty cash money laundering, the original money  
9 laundering, you know, mobsters, narcos; and then after 9/11,  
10 the war on terror, which sort of didn't take all the oxygen  
11 out of the room, but certainly became the number one  
12 priority and it remains that way today. So the drug traffic  
13 war and then later the war on terror were clearly one and  
14 two on the list of priorities.

15 Q. And in terms of the second item you have here,  
16 Mr. Grice, in terms of analyzing M&I's actions based on the  
17 information M&I had about PCI at the time, when you say "at  
18 the time," do you mean before September 2008?

19 A. Precisely.

20 Q. And so you mentioned the Petters guilty verdict and  
21 guilty pleas by others. You also mentioned the PwC report  
22 by Mr. Martens. Do you recall what year that was in?

23 A. I think 2010 was the first version, but he went through  
24 multiple -- he did a lot of work on this because it's  
25 complex.

Grice - Direct

1 Q. Was your approach to look at what the bank knew putting  
2 aside that information that came after September 2008?

3 A. I had to do that because, again, that wasn't available  
4 to the AML analysts that we heard from or any of the  
5 bankers.

6 Q. Mr. Grice, I know you've written reports that are nearly  
7 200 pages, and I am not going to take you through those in  
8 detail. I would like to focus on your main opinions in the  
9 case, though.

10 Have you prepared a slide on that just to walk us  
11 through those?

12 A. Yes, I have.

13 MR. SCHAPER: If we could please put up DD-60,  
14 slide 3.

15 BY MR. SCHAPER:

16 Q. Mr. Grice, did you form an opinion regarding whether  
17 M&I's BSA/AML policies and procedures were appropriate  
18 during the relevant time period of 2002 to 2008?

19 A. Yes, sir. I studied this very closely. What was the  
20 bank instructing its employees to do and was that  
21 instruction proper given what the federal government was  
22 saying at the time.

23 Q. And did you form an opinion on that?

24 A. Yes, sir, I did. It was consistent with federal  
25 guidance.



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1 Q. Did you form an opinion regarding whether M&I's  
2 monitoring of and provision of services related to PCI and  
3 the PCI account was appropriate?

4 A. Yes, sir. Again, given what was known at the time, was  
5 the behavior -- was the conduct of M&I's staff reasonable  
6 for the way they treated their client or was there  
7 extraordinary service. So was it reasonable? Was it --

8 Q. And was it?

9 A. It was, yes.

10 Q. We've heard a lot about red flags in this trial,  
11 Mr. Grice. Did you form an opinion regarding whether there  
12 were any red flags in PCI's account that were signs of  
13 suspicious activity or fraud?

14 A. Yes, sir. I think most of my 200 pages were dedicated  
15 to analyzing each of the alleged red flags, and I found no  
16 what the plaintiff has considered red flags at the time.  
17 They just didn't exist.

18 Q. And when you mean that, you are talking about red flags  
19 of suspicious activity?

20 A. Yes, sir. I'm sorry.

21 Q. And, Mr. Grice, did you form an opinion about whether  
22 the conduct of M&I employees was what would be expected from  
23 bank employees who actually were involved in some kind of  
24 financial fraud?

25 A. Yes, sir. So I looked at this closely. I read, I

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1 think, somewhere about 60 deposition transcripts. Some of  
2 the bank employees like Mr. Flynn had been deposed at least  
3 five times. And, in my experience, that's a lot of chances  
4 to ask the question or find evidence of potential misconduct  
5 by an employee. I saw no evidence or even a suggestion of  
6 improper conduct or the things you would see that would  
7 motivate improper conduct; you know, bribes, gratuities,  
8 gifts, et cetera.

9 Q. And then, lastly, and you've talked about this a bit  
10 already, Mr. Grice, but did you form an opinion about the  
11 criticisms that plaintiff's expert, Ms. Ghiglieri, had about  
12 M&I, including how M&I handled PCI's account?

13 A. I did. In my opinion, she suffers from this hindsight  
14 bias problem that I've described.

15 Q. You mentioned that this is one of the biggest amounts of  
16 material that you've ever reviewed in a case that you have  
17 worked on. Did I hear that correctly?

18 A. Absolutely correct, yes, sir.

19 Q. Did you feel that you had sufficient facts and data to  
20 reach your conclusions?

21 A. More than abundant. More than sufficient, I guess I  
22 should say.

23 Q. Did you create a slide that goes through the types of  
24 information that you had?

25 A. Yes. It's high level, but it will give you a sense for

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1       what I had access to.

2               MR. SCHAPER:   Could we please put up slide 4 of  
3       DD-60.

4       BY MR. SCHAPER:

5       Q.   And, again, don't need a lot of detail, but if you could  
6       just walk through, Mr. Grice, the kind of materials that you  
7       had access to for your report.

8       A.   So the graphic on the right is at least the footnotes to  
9       my report.   There are hundreds of footnotes referencing  
10      these many, many, many documents, but the regulatory  
11      guidance is all of the laws, regulations, instruction  
12      manuals, training manuals, examination manuals issued by  
13      especially the Federal Reserve.

14             The bank's policies and procedures, which I think  
15      Ms. Maltsch yesterday had a printed copy, which is a good --  
16      it's the size of this binder (indicating).

17             The many kinds of reports generated by M&I's own  
18      internal systems, and there are many.   There were many  
19      before Searchspace, and there were many after or during  
20      Searchspace, but the internal systems.

21             The collection of documents specifically  
22      referencing the 9018 account and the relationship with  
23      Petters.   That includes the e-mails with -- between Deanna  
24      Coleman -- Ms. Coleman, for example, and bank employees.

25             All of the transactional data related to PCI that

1 was housed inside the bank.

2 An extremely large collection, and for me a little  
3 bit unusual, of examination documents from the Federal  
4 Reserve during this period of '02 to '08.

5 Q. Why do you say it was unusual, the set of Federal  
6 Reserve examination materials?

7 A. In my consulting role, I'm inside the bank and I get  
8 access to this. These are very confidential documents, and  
9 they're covered by an examination privilege. And the  
10 documents are stamped with "Property of the Federal  
11 Reserve." So during my career, it's rare in litigation that  
12 we get access to this.

13 Q. But in this case, you had access to a good volume of  
14 federal exam materials?

15 A. A very good volume. So it's seven or eight years of  
16 very detailed high-level, medium-level and very granular  
17 conversations between the bank and the Federal Reserve about  
18 their BSA program.

19 Q. Okay. And then what are the last two items in the  
20 materials that you reviewed?

21 A. Documents from M&I's internal audit department. So they  
22 have an internal audit inspection team that evaluates  
23 compliance with their own policies and procedures.

24 And then, finally, this collection of 60  
25 depositions and all of the exhibits. So the depositions are

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1 several hundred pages long, and the exhibits are another  
2 large collection of documents. So I think I had sufficient  
3 information to understand what happened here.

4 Q. Was there any information that you asked for from the  
5 bank that you did not receive?

6 A. No, sir. In fact, it was the opposite. There were  
7 things I asked for that I expected I would not receive, and  
8 I got them, so the fed documents in particular.

9 Q. Have you also listened to or read the testimony at this  
10 trial?

11 A. I have. I missed two days, I believe, but I've been  
12 here in the back listening and taking this in.

13 Q. And are you generally aware of an issue about whether  
14 certain e-mails from before 2000 -- March 2005 were  
15 recycled? Are you aware of the issue that there's an issue  
16 in this case whether e-mails before March 2005 were  
17 recycled?

18 A. Oh, yes. I was here for some of that testimony as well.

19 Q. And even with that issue, are you still confident that  
20 the information you had was sufficient to reach your  
21 conclusions?

22 A. Yes, sir.

23 Q. And why is that?

24 A. Again, it was the sufficiency of the documents that I  
25 saw. There's a lot of redundancy in the document collection

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1 I saw, but my understanding is everything from March '05  
2 forward --

3 MR. ANTHONY: Objection, lacks foundation.

4 THE COURT: Overruled.

5 THE WITNESS: So I was here for the testimony of  
6 the IT witness, and my understanding is --

7 MR. ANTHONY: Objection, mischaracterizing,  
8 commenting on the testimony of another witness.

9 THE COURT: Sustained.

10 BY MR. SCHAPER:

11 Q. Just explain your understanding.

12 A. My understanding is March 2005 going forward, everything  
13 is there.

14 MR. ANTHONY: Objection, lacks foundation.

15 MR. SCHAPER: Already been ruled on, Your Honor.

16 THE COURT: It has.

17 MR. ANTHONY: I just want to preserve my objection  
18 that it lacks foundation.

19 THE COURT: It is preserved, Counsel.

20 MR. ANTHONY: Thank you, Your Honor.

21 BY MR. SCHAPER:

22 Q. Mr. Grice, were you also able to review some materials  
23 in this case from before 2005?

24 A. Yes, sir. So I had the MIContacts, for example; I  
25 had -- well, I had the exhibits and the documents gathered I

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1       assume by the government and by the trustee from PCI. So I  
2       had bank internal documents that preceded March 2005; you  
3       know, internal policies and procedures, training materials,  
4       systems reports. A lot of this, my understanding, is not  
5       affected by the document destruction question.

6       Q. Okay. Thank you, Mr. Grice.

7               So you said that -- a little bit earlier that one  
8       of the challenges in this assignment for you was to make  
9       sure you were evaluating M&I in the context of the  
10      regulatory expectations at the time. Am I recalling that  
11      correctly?

12      A. Yes, sir.

13      Q. Mr. Grice, have you prepared a demonstrative with a  
14      timeline that shows regulatory developments at that time?

15      A. Yes, sir.

16              MR. SCHAPER: Okay. Can we please put up slide 5  
17      of DD-60.

18      BY MR. SCHAPER:

19      Q. So, first of all, there's a fair amount going on here,  
20      Mr. Grice. So let's just start at the beginning.

21              When did federal banking agencies begin  
22      prescribing regulations for BSA/AML compliance?

23      A. Again, I feel like I grew up with these. I was 12 when  
24      the BSA was adopted by Congress. But when I got to Capitol  
25      Hill, there were hearings asking the fed to put out

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1 instructions for how banks should comply.

2 So 1986 on this timeline is the Money Laundering  
3 Control Act which criminalized money laundering for banks  
4 and bankers. That's when you started to see the beginning  
5 of a formal examination process with examination procedures  
6 that ultimately get published and released to the banks. We  
7 get a clearer understanding of what the expectations were  
8 for bankers, how we're supposed to comply with this very  
9 important, but, as of then, kind of un -- nonspecific  
10 instructions.

11 Q. Let's move to the early 2000s and get to the time that's  
12 most relevant to this case. Were any laws related to  
13 BSA/AML issues passed then?

14 A. Yes. The largest single collection of BSA regulations  
15 ever was brought about because of the USA PATRIOT Act, which  
16 we heard about yesterday from Ms. Maltsch. It's a  
17 collection of laws that really changed the landscape for how  
18 banks are supposed to comply with the issues in this case.  
19 So this concept of "know your customer" gets, for the first  
20 time, very specific. It had not been specific until 2001,  
21 and now finally we have a federal standard that applies to  
22 all banks.

23 Q. And what was the "know your customer" standard that came  
24 out of the PATRIOT Act?

25 A. In retrospect, it was kind of underwhelming, but I was



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1 grateful to have specificity. It's called the customer  
2 identification procedures. The banks were required to have  
3 a very specific checklist of four items -- again,  
4 Ms. Maltsch spoke to this yesterday -- the customer name,  
5 the street address, the date of birth, and then either the  
6 Social Security number or the tax ID number.

7 Q. Social Security number if it's an individual, tax ID  
8 number if it's a business?

9 A. That's correct.

10 Q. Did you see anything in the record in this case  
11 suggesting that M&I didn't have the requisite customer  
12 information about PCI?

13 A. No. I looked at the signature card. I looked at the  
14 onboarding documents. I don't think there's any allegation  
15 that the bank did not have sufficient identification  
16 documents from Petters -- for Mr. Petters or from PCI when  
17 it was established at the prior bank.

18 Q. And were there also enhanced due diligence requirements  
19 coming out of the PATRIOT Act?

20 A. Yeah, they came in two phases, and I think Ms. Maltsch  
21 spoke to this yesterday. There was a requirement that banks  
22 start to identify higher-risk customers, and she worded it  
23 very precisely, higher-risk customers. The government gave  
24 us a list of who they thought were higher-risk customer  
25 types and customer characteristics; and then later, much

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1 later, in 2018 -- I'm sorry, 2016, there was a requirement  
2 that we start risk rating effectively all customers. We  
3 have to find a high, medium, or low for everybody, but that  
4 comes much later after the Petters scheme was discovered.

5 Q. You said that concept was 2016?

6 A. Yes, sir.

7 Q. Focusing again on this early 2000s period, were Ponzi  
8 schemes a focus of the laws and regulations that were coming  
9 out in that time period?

10 A. No, sir.

11 Q. Does that mean that Ponzi schemes didn't yet exist?

12 A. No. I think there were questions on this yesterday.  
13 Charles Ponzi existed 100 years ago and kind of gave birth  
14 to the first Ponzi scheme. There have been complex frauds  
15 always. It just wasn't top of mind or prominent in the  
16 examination process between the fed and their banks. And I  
17 know, in my experience, I've never heard a Federal Reserve  
18 or OCC or FDIC examiner ever ask, Where are your Ponzi  
19 schemes, or tell me about your Ponzi scheme prevention  
20 program. It just wasn't -- I am using the phrase "top of  
21 mind." It wasn't in people's mind.

22 Q. When you say you personally have never heard that, does  
23 that include in your role at banks in the 2002, 2008 period  
24 dealing with the federal regulators?

25 A. Yeah, both in these six assignments where I'm the chief

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1 compliance officer, but I guess as fundamentally, my -- I  
2 have 30 people in my shop, and a lot of us are former bank  
3 examiners or former bank examination employees. We  
4 supervise about 50 examinations a year. So our clients are  
5 being examined on their annual exams, and we advise the  
6 banks on how to comply with the laws and regulations during  
7 these exams. We didn't hear and we continue not to hear  
8 questions related or tied to Ponzi schemes.

9 Q. We've heard some indications, Mr. Grice, that money  
10 laundering has been a focus of regulators. Have you heard  
11 that testimony?

12 A. Yes, sir.

13 Q. Is it possible that a Ponzi scheme could involve money  
14 laundering?

15 A. Certainly.

16 Q. Does that mean that regulators were focused on that type  
17 of money laundering during this relevant period?

18 A. No. I guess I'm trying to address the symptoms that  
19 banks were told to look for or the specific conditions or  
20 behaviors banks were told to look for were not these complex  
21 situations that I think we all agree are Ponzi schemes.

22 So, you know, fraud is a human condition. It's  
23 everywhere. But Ponzi schemes are a complex collection of  
24 symptoms or characteristics, and that was not prominently  
25 part of an examination process or an inspection by the fed.

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1 Q. What was the focus when it came to money laundering at  
2 this time?

3 A. Originally just cash from drug dealing; literally, you  
4 know, cocaine-stained cash or blood-stained cash, you know,  
5 cash that was part of a criminal transaction. That broadens  
6 to other kinds of cash, including tax evasion. But it's  
7 always cash.

8 So cash was the issue really until 9/11. So it  
9 was cash-intensive businesses. We heard Ms. Maltzsch talk  
10 about this yesterday. It was the focus -- the sphere of  
11 focus was cash.

12 Q. And looking at your timeline, did there come a time when  
13 bank regulators did have some more focus on Ponzi schemes?

14 A. Yes, sir.

15 Q. When was that?

16 A. Well, so the Petters scheme is revealed in September  
17 2008; and in very short order, we have several other large,  
18 complex Ponzi schemes, the largest by far being Bernard  
19 Madoff in December 2008.

20 A sort of baby version of Madoff was the Allen  
21 Stanford Ponzi scheme in the Caribbean in February 2009.

22 And then an even smaller but more obnoxious Ponzi  
23 scheme because it involved a dirty bank employee, was the  
24 Scott Rothstein Ponzi scheme in November 2009.

25 Q. And where on your timeline, Mr. Grice, is M&I's

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1 relationship with the 9018 PCI account?

2 A. So it starts in 1999 on the left-hand side of the page,  
3 and it stops in September 2008 with the raid of the Petters  
4 office.

5 Q. So on your timeline, is that before Ponzi schemes got  
6 some more interest in the regulatory environment?

7 A. Yes, sir. It's right in the middle, but it precedes  
8 this later discovery of large, complex Ponzi schemes.

9 Q. Mr. Grice, in the 2002 to 2008 period, did regulators  
10 take steps to give banks more clarity in how to develop  
11 their BSA/AML compliance programs?

12 A. Happily, yes. I was complaining earlier about the lack  
13 of specificity; and in 2005, they gave us what we asked for,  
14 which is a lot of specificity.

15 Q. In what form did that guidance come?

16 A. We got a 367-page examination manual from the FFIEC. I  
17 have heard testimony about this here. The FFIEC is a  
18 collection of the bank regulators. And they published for  
19 the first time the test. So we got to see 367 pages of exam  
20 questions and related to it a lot of instructions or  
21 suggestions for how banks might want to prepare for that  
22 part of the test. So it really was like back in high school  
23 where the teacher gives you a preview of the test. This is  
24 the test.

25 Q. And, in general terms, what did the guidance say in

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1 terms of how to approach designing and maintaining a  
2 successful BSA/AML compliance program?

3 A. It's a simple idea, but it takes them 367 pages to say  
4 it. It's a risk-based or risk-focused approach where --

5 Q. What does that refer to?

6 A. The government wants the banks, and I think this is  
7 reasonable, the government wants the banks to understand  
8 their own risk, you know, the kinds of customers they have,  
9 the kind of business they're engaged in, the kinds of  
10 transactions their customers engage in, and then build a  
11 program that controls that risk or reduces that risk. So  
12 it's kind of like a test yourself program, and then you'll  
13 be evaluated on how well you design your own compliance  
14 regime or your own compliance program.

15 Q. And have you prepared a demonstrative explaining that  
16 concept?

17 A. Yes, sir, I have.

18 MR. SCHAPER: If we could please put up,  
19 Mr. Herzka, slide 6 from DD-60.

20 BY MR. SCHAPER:

21 Q. Okay. So let's just start at a high level without  
22 getting into detail, Mr. Grice. What are we looking at  
23 here?

24 A. So the top of the slide is -- just to be clear, this is  
25 an extract of this exam manual. So we lifted that verbatim.

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1 And then the bottom of the slide is a rough translation to  
2 what these three boxes with the arrows mean; "risk  
3 assessment," "internal controls," and then the consequent  
4 "risk-based BSA compliance program."

5 Q. So, first of all, what does "risk assessment" refer to?

6 A. This is that idea that you, the bank, are the best judge  
7 with our guidance, with the fed's guidance, on how much risk  
8 you have in your organization. You know your customers, you  
9 know their businesses, therefore, design your own  
10 appropriate compliance regime. But the first step is you  
11 have to assess your own risk, and then the fed comes in once  
12 a year and reads that risk assessment and gives a thumbs up  
13 or thumbs down on whether you have done it correctly.

14 Q. And we'll come back to this in a minute, but this slide  
15 indicates identifying and measuring risk across products and  
16 services, customers, and geographic locations. Those are  
17 the components of the risk assessment?

18 A. That is the secret to this 367-page manual. So if you  
19 capture this, everything else follows, right? So there are  
20 three parts of my risk; the products I offer. There are  
21 banks that only offer credit cards. M&I offers a whole  
22 variety of things, so, therefore, we have a whole variety of  
23 different kinds of risk associated with each of those  
24 products.

25 The customers. There are banks that have only

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1 internet customers. M&I has customers of all types who come  
2 and go in branches and live in different places, so that's a  
3 different kind of risk. But they are all in the United  
4 States.

5 And then, finally, geographic locations. If we  
6 were on the border with Mexico or if we were in New York  
7 City or in south Florida, we are in a high-risk jurisdiction  
8 according to the Federal Reserve. And if we did  
9 transactions outside the United States, if our customers  
10 did, for example, wires to Asia, Latin America, Europe, it's  
11 a whole different ball of wax. So geography matters.

12 Q. We'll come back to that. What does "internal controls"  
13 refer to again at a high level?

14 A. These are the what tools do you need to manage the risks  
15 that we just talked about. What are the things you need to  
16 build; so the policies, the systems, and the other controls,  
17 things like training. What are the things you need in order  
18 to capture and manage this risk.

19 Q. And just third, what is "risk-based BSA compliance  
20 program," what does that cover?

21 A. So if you have done it right, then your program will  
22 reflect the proper kind of weight and design of the internal  
23 controls, meaning especially the software, things like  
24 Searchspace, the audit process, the qualifications, the  
25 quality of the compliance officer who runs the program, and



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1 then finally the training for the employees.

2 Q. I think you testified earlier, Mr. Grice, that as part  
3 of your assignment, you've become familiar with M&I's  
4 policies and procedures related to its BSA/AML program  
5 during the 2002 to 2008 time period?

6 A. Yes, sir.

7 Q. And I think you compared the volume of those materials  
8 to the binder that's sitting in front of you; is that right?

9 A. It's a big thing. It's a big pile.

10 Q. And you reviewed those policies and procedures as part  
11 of your work on this case?

12 A. I did. Again, the binder I looked at was just the  
13 BSA-related policies and procedures, but I looked at all of  
14 them across the 2002 to 2008 time period.

15 Q. And based on your review of the record, were M&I's  
16 BSA/AML policies and procedures consistent with regulatory  
17 expectations and industry practice at the time?

18 A. Yes, sir, and they were fine-tuned throughout the  
19 period, so.

20 Q. What do you mean by that?

21 A. Well, each year the fed comes back and reads them again  
22 and says, We suggest you add this or take out that. So you  
23 see the generations of the policies and procedures as the  
24 fed comes and goes.

25 Q. Let's talk -- you talked about a risk assessment. Let's

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1 just talk about that a little bit more. Did M&I perform a  
2 risk assessment?

3 A. It did. I think it was -- most of the first was in  
4 2004, but that was my recollection. Then it gets updated  
5 throughout the period.

6 Q. And I think you covered this. Was there regulatory  
7 guidance at the time regarding what kinds of customers  
8 should be considered high risk?

9 A. Yes. It was a very specific instruction, recipe of  
10 methodology for how to do this.

11 Q. And did you prepare a slide to explain that?

12 A. Yes, sir.

13 MR. SCHAPER: Mr. Herzka, if we could go to slide  
14 7 of DD-60, please.

15 BY MR. SCHAPER:

16 Q. There are three categories here, right?

17 A. Yes, sir, it's the same -- believe it or not, it's the  
18 exact same three categories that we saw on the last slide of  
19 the products and services, the customers, and the  
20 geographies.

21 Q. So if one of the higher-risk categories may apply to a  
22 customer, does that customer automatically get considered  
23 high risk?

24 A. No. We want to take that into consideration. So you're  
25 doing -- the rest of you may be totally not risky, but

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1 you're engaged in a product or a service that has more risk  
2 in it. So it contributes to your overall risk profile, but  
3 that's not your final grade.

4 Q. And did M&I classify PCI as a high-risk account?

5 A. No.

6 Q. So let's look at some of the specifics. What did the  
7 regulatory guidance consider to be high-risk products and  
8 services?

9 A. So these are examples taken from the book on the right.  
10 These are examples of high-risk products. So electronic  
11 funds payment services, which are -- this includes wires,  
12 ACH, a lot of things we do routinely today, but the reason  
13 they're considered higher risk is they're fast. So it's a  
14 fast way to move money as opposed to wheelbarrows of cash or  
15 a check.

16 Trust and asset management, which is managing  
17 money on behalf of others. So if I'm a trustee or an asset  
18 management business, if I'm your stockbroker, I am managing  
19 your money and therefore there's some risk that I can engage  
20 in fraud.

21 And then, finally, monetary instruments.  
22 Cashier's checks or bank checks have always been an  
23 attractive form for money launderers. If I put the \$3,000  
24 on the check, that \$3,000 is on the check. If I lose the  
25 paper, it's lost.

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1 Q. Mr. Grice, were there particular types of electronic  
2 funds payments that were considered high risk at the time?

3 A. The overall family, but wires are enumerated. They are  
4 listed as a kind of high-risk activity.

5 Q. And was there a particular kind of wire transfer that in  
6 the regulatory landscape were considered high risk?

7 A. Yeah, the focus remains today, but it certainly was true  
8 during the period, on international wires, crossing borders.  
9 And the logic for this, if I can, is --

10 Q. Sure.

11 A. -- with the PATRIOT Act, there, for the first time,  
12 became a kind of bias where our government really wants wire  
13 transfers to have U.S.-regulated banks on both ends of the  
14 wire transfer.

15 So a wire transfer is I go to my bank to send  
16 money to you at your bank. The two banks have both vetted  
17 us. So my bank knows their customer, so there's KYC by my  
18 bank, and your bank does KYC on your bank, so, therefore,  
19 this high-speed transmission is less risky because if the  
20 banks are doing their job, in other words, if the fed is  
21 doing its job, it's supervising our respective banks, the  
22 risk is mitigated. So that's why international wires are  
23 frightening because you don't know who is on the other end.

24 Q. Was there some consideration in terms of whether a  
25 customer was a regular as opposed to an irregular sender of

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1 wire transfers?

2 A. Again, in the wire business, it's regular versus one-off  
3 or one time. So, yeah, the irregular, the occasional wire  
4 remitter is seen as a different -- a higher risk, a  
5 different risk, a less stable risk than the regular  
6 remitter, the regular wire transfer customer.

7 Q. And was PCI a regular wire transfer customer?

8 A. It was a regular wire transfer customer, and what that  
9 means in the United States is to be one of these regular  
10 wire customers, you have to sign a Wire Transfer Agreement  
11 with your respective bank.

12 Q. Did PCI have one of those?

13 A. They did. And then as part of that -- part of that  
14 vetting process, there are specific instructions and a PIN  
15 number. And I think Ms. Coleman testified about the fact  
16 that she had access to the PIN number. So then she could  
17 call the bank and say -- I forget what the code was, she  
18 could just give the code to the banker on the other end of  
19 the telephone and they knew with certainty or reasonable  
20 certainty they were talking to the properly authorized  
21 person who could instruct the wire transfer.

22 Q. So there's a reference to high-risk customers and  
23 entities. What kinds of customers were considered high risk  
24 in terms of the regulatory guidance at the time?

25 A. So not surprisingly, foreign banks, non-U.S. banks

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1 because, again, we jut don't know the quality of their  
2 regulations and KYC requirements.

3 Foreign political figures, and the jargon is PEPs,  
4 politically exposed persons; you know, foreign diplomats,  
5 heads of state, their family members.

6 NGOs, nongovernmental organizations, charities,  
7 and, in particular, charities that are doing -- that are  
8 active in places that were part of the war on terror.

9 During this time frame, religious schools in Pakistan, for  
10 example, were considered extremely high risk and banks were  
11 on the lookout for this.

12 And then, finally, this whole category of nonbank  
13 financial institutions. Ms. Maltch talked about money  
14 service businesses yesterday. These are these storefront  
15 operations, you walk in, I want to send money to my sister  
16 someplace. I'm not a customer of anybody. I'm just walking  
17 in. I hand cash over to the attendant, and money goes  
18 through Western Union or MoneyGram. That's doing a banking  
19 role but without any KYC, and so that's been a high priority  
20 since 9/11.

21 Q. And there's a reference also on the slide to other  
22 "cash-intensive businesses." What does that refer to?

23 A. Again, anybody who -- Dollar Stores, anybody who does  
24 primarily cash transactions, garage sales, farmers markets,  
25 these things we take for granted. Certainly prepandemic,

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1 things we just take for granted or use cash. Anybody taking  
2 cash was seen as more risk, all things being equal, than  
3 somebody who took credit cards or checks.

4 Q. Just to be clear, was PCI any these high-risk customer  
5 types?

6 A. No, sir.

7 Q. And what did the regulatory guidance consider to be  
8 high-risk geographic locations?

9 A. So this has become kind of an art form because the  
10 government keeps changing its mind on where this geographic  
11 risk is.

12 Q. Let's focus on the 2002 to 2008 time period.

13 A. So in 2002, on the right-hand side, bottom right of that  
14 slide, it talks about domestic locations that were  
15 high-intensity drug trafficking areas or high-intensity  
16 financial crime areas; you know, New York City; Miami,  
17 Florida. I live in Texas now. So along the border, we're  
18 considered dangerous domestic jurisdictions for potential  
19 financial crime.

20 Q. Has Minnesota been on that list or was it during 2002 to  
21 2008?

22 A. It has never been on the list. At least as of this  
23 morning, I looked, it is still not on that list. Chicago  
24 is, interestingly, but not Minnesota.

25 Q. What about the -- just briefly what about the

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1 international locations that are high-risk geographies?

2 A. This is an ever-changing list that reflects really the  
3 success of the war on terror. So countries get added and  
4 deleted from this list; Switzerland, at one point, Israel.  
5 Russia, they were on the list. They came off. Russia is  
6 back on it again. China has been off it and on it twice, so  
7 it depends on the politics. And the president is ultimately  
8 the arbiter for what that list looks like.

9 Q. And to your knowledge, was PCI involved with any  
10 high-risk geographic locations?

11 A. No, I saw no reference to international transactions.

12 Q. Mr. Grice, do you recall Mr. Ghiglieri's testimony that  
13 M&I should have been placed -- should have placed PCI on a  
14 high-risk customer list?

15 A. I do recall that, yeah.

16 Q. And do you agree with that?

17 A. Not at all.

18 Q. Why is that?

19 A. Why do I not agree?

20 Q. Yeah.

21 A. I think it's inconsistent with everything we just talked  
22 about. It's inconsistent with the guidance from the Federal  
23 Reserve. It's also inconsistent with industry custom and  
24 practice at the time.

25 Q. Let's switch topics, Mr. Grice. You testified a moment



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1       ago that you concluded M&I's policies and procedures were  
2       appropriate and consistent with regulatory expectations; is  
3       that right?

4       A.   That's correct.

5       Q.   And that was your own conclusion?

6       A.   Yes, sir.

7       Q.   And was that conclusion informed by your past roles that  
8       you've testified about as an interim compliance officer  
9       during the 2002 to 2008 time period?

10      A.   Yes, sir, certainly.

11      Q.   Are you aware that Ms. Ghiglieri, plaintiff's expert,  
12      reached the opposite conclusion?

13      A.   I am.

14      Q.   Do we have to take your word for it about M&I's policies  
15      and procedures, or is there some regulatory agency we can  
16      look to that looked at the policies and procedures at the  
17      time?

18      A.   I'm comfortable with you taking my word for it, but  
19      there happens to also be --

20               MR. ANTHONY: Your Honor, objection, opinion in  
21      violation of the Court's *Daubert* ruling on September 29  
22      that -- of this year. If he is about to give an opinion as  
23      to what some agency thought about something, that's been  
24      barred.

25               MR. SCHAPER: I believe that this has been

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1 addressed by the Court this morning. This objection has  
2 been overruled.

3 THE COURT: Overruled.

4 BY MR. SCHAPER:

5 Q. I'm sorry, Mr. Grice. Was there a federal agency that  
6 looked at M&I's policies and procedures in the 2002 to 2008  
7 time period?

8 A. Yes, sir. The Federal Reserve Bank of Chicago came to  
9 M&I every year to perform what's called a targeted BSA/AML  
10 examination.

11 Q. And did you prepare a demonstrative about the role that  
12 the fed plays in the banking system?

13 A. Yes, sir.

14 MR. SCHAPER: If we could please put up slide 8 of  
15 DD-60.

16 BY MR. SCHAPER:

17 Q. So you've talked about the fed. We've heard about it  
18 some during the trial. But can you just explain what we're  
19 talking about when we mention the fed or the Federal  
20 Reserve.

21 A. So I think Jeanne Crain explained this since she's on  
22 the board of the Federal Reserve Bank of Minneapolis. This  
23 is a graphic depiction of the way the Federal Reserve is  
24 organized. So I worked early in my career for the Federal  
25 Reserve Board, which is where Jerome Powell is the chairman

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1 of the board, and this is where monetary policies, interest  
2 rates and so forth are established.

3 The member banks, the Federal Reserve banks --  
4 there are 12 around the United States -- have responsibility  
5 for supervising the performance of all of the banks that  
6 they regulate around the United States. And so M&I Bank  
7 during this period was supervised by the Federal Reserve  
8 Bank of Chicago.

9 Q. What form does that supervision take?

10 A. Annual inspections. They call it supervisory  
11 examinations, but it feels like an inspection. It's very  
12 detailed, and it's done by people in your office talking to  
13 your employees and reading all of your documents, et cetera.  
14 So it's a very --

15 Q. When you say "it's done by people in your office," do  
16 you mean it's done by people from the fed coming to a bank's  
17 office?

18 A. Yes, sir. I'm sorry. I should be specific. It's  
19 Federal Reserve employees who come into the bank and ask any  
20 question, open any drawer, interview any employee about  
21 anything. So it's quite a thing to see this unfold.

22 Q. And do these annual federal -- fed examinations include  
23 examinations of banks' BSA/AML compliance?

24 A. Yes, sir. So during this period, the practice was for  
25 the Federal Reserve to do several kinds of examinations.

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1 There's a general safety and soundness examination they  
2 perform, looking at loan quality, for example, and  
3 profitability.

4 After 9/11, a special examination was born that  
5 was targeted just to look at BSA/AML issues, and that's what  
6 I'm referring to when I say these annual examinations. They  
7 were focused just on BSA/AML.

8 Q. Did you prepare a slide to help aid your testimony in  
9 describing what the examination process looks like?

10 A. Yes, sir.

11 MR. SCHAPER: If we could please put up slide  
12 60 -- sorry, DD-60, slide 9.

13 BY MR. SCHAPER:

14 Q. And the title that you gave this slide, Mr. Grice, was  
15 "Continuous Improvement Cycle." What does that mean?

16 A. This reflects -- even though the examination happens  
17 generally in the summer for M&I during this period, there's  
18 activity all year long getting ready for, getting through,  
19 and then recovering from the last examination, taking the  
20 remedial steps that are always recommended. Should I go  
21 through it quickly?

22 Q. Yeah, so what happens first? You have, "Fed submits  
23 questions and requests for information."

24 A. Yeah, so the top of the slide, my contact at the Federal  
25 Reserve Bank of Chicago would send me an e-mail saying,

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1 Charles, we are going to come see you in a month, and here's  
2 a questionnaire we want to you complete. Basically send us  
3 everything. Even if you sent it to us last year, send it to  
4 us again. We want the new version of all your policies,  
5 procedures, anything that's different.

6 And then as we work around the clock, the fed  
7 examines that and asks more questions. Then at about --  
8 what is that? -- 4:00, the fed performs the on-site  
9 examination. That's the piece you see where the examiner is  
10 going up and down the hallway interviewing people.

11 The bottom of the slide, there's a series of  
12 closeout meetings. There's a soft close and then the  
13 official close where they tell you how you did on the exam.

14 And then if we go back up the other side, the bank  
15 is providing updates. And then the last step is the fed  
16 reviews those updates, gives feedback, and then announces  
17 their next examination. So it really is kind of -- for a  
18 bank this size and complexity, it's kind of a nonstop  
19 examination cycle.

20 Q. And in terms of M&I specifically, during this time  
21 period did the fed, before an exam started, request  
22 information from M&I Bank?

23 A. Yeah, it's -- it averages about 15 pages. It's called a  
24 PERK letter, the Pre-Examination Response Kit. So they tell  
25 you what they want to see before they get there, so they use

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1 their time efficiently when they're in the building.

2 Q. And in preparing your report, did you see documents that  
3 were those requests from the fed that M&I then responded to?

4 A. Yes, sir.

5 Q. Okay.

6 MR. SCHAPER: If we could take a look at an  
7 example, and, Mr. Herzka, please do not put it up on the  
8 screen. And we can take that slide down for the moment.

9 BY MR. SCHAPER:

10 Q. Can you please turn in your binder, Mr. Grice, to what's  
11 been marked for identification as DX-50529.

12 A. Yes, sir.

13 Q. Do you recognize this document?

14 A. I do.

15 Q. And what is it?

16 A. This is the June 2007, it's called a chronological log.  
17 This is a document I reviewed, which is -- I think this is  
18 Peter Janczak's notes on what has been requested and what we  
19 provided during -- what we -- what the bank provided the fed  
20 during the examination.

21 Q. And, again, did you rely on this document in forming  
22 your expert opinions in this case?

23 A. I did. I find this really interesting.

24 MR. SCHAPER: Your Honor, defendant offers  
25 DX-50529 into evidence.

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1 MR. ANTHONY: Same objection.

2 THE COURT: Overruled.

3 MR. SCHAPER: If we could publish that, please,  
4 Mr. Herzka.

5 BY MR. SCHAPER:

6 Q. So if we could just focus in on the top there so the  
7 jury can see it, so I think you said, Mr. Grice, that this  
8 is M&I Bank, Federal Reserve Bank of Chicago, and it  
9 references the BSA/AML examination of June 2007. Do you see  
10 that?

11 A. That's correct.

12 Q. And I think you testified that this is a chronological  
13 log of activity as part of that exam process?

14 A. Yes. And it's in reverse order. So the last thing is  
15 first, so --

16 Q. Okay. If we --

17 A. -- July 3rd.

18 Q. If we look at page 3 -- I'm sorry. I didn't mean to cut  
19 you off, Mr. Grice. If we look at page 3 at the top portion  
20 there, there's a reference to "Off-Site Materials." What  
21 are we looking at here, Mr. Grice?

22 A. This is the -- this pre-exam kit. Send us everything  
23 about you before we come to visit you so we can be ready to  
24 go and hit the ground running. It's the bank's opportunity  
25 to describe all the changes that are in place so that the

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1 fed will understand and be fluent in M&I when they arrive.

2 The left-hand side is what has been requested.

3 The middle is who is in charge of gathering that, either  
4 bank employees, Kelley -- I am presuming Kelley Maltsch is  
5 in charge of this. And then on the right-hand side is the  
6 status, so is it open or has it been resolved. These are  
7 completed items.

8 Q. Mr. Grice, are there consequences for a bank or to a  
9 bank for not responding to these kind of information  
10 requests by the fed?

11 A. There are -- yes, there are formal and informal  
12 consequences. You don't want to make the fed unhappy ever,  
13 so you want to respond completely to any requests, in my  
14 experience, from the Federal Reserve. So you take these  
15 requests very seriously.

16 Q. And we'll look at a few examples, but just in your  
17 review of the record, did you see any indication that M&I  
18 failed to respond in a complete way to requests for  
19 information by the fed?

20 A. No. In fact, I found the opposite, which is we  
21 appreciate your complete, kindly, courteous, et cetera,  
22 response. So the fed is constantly saying, Thank you for  
23 all this stuff. We are asking for a lot of stuff and you  
24 sent it to us.

25 Q. Let's look at a few items on this page.



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1 MR. SCHAPER: If you could just look at Items 2  
2 and 3, Mr. Herzka.

3 BY MR. SCHAPER:

4 Q. And, Mr. Grice, if you would just explain what  
5 information is the fed requesting from M&I Bank in Items 2  
6 and 3?

7 A. So this would be -- I think of this as kind of a  
8 top-down request. They want to see the policy, the  
9 governance documents that guide the bank's BSA program. So  
10 we heard testimony from several people, including  
11 Ms. Ghiglieri, about this. We want to see a copy of the  
12 bank's written BSA compliance program, so the formal adopted  
13 package that governs everything about BSA.

14 Then Item 3 is all of the many, many parts of the  
15 procedures related to how we're going to satisfy those  
16 expectations. So this is the more granular kind of like an  
17 instruction manual. This is how we do it. And each year  
18 that gets provided to the feds. So they are seeing all of  
19 the refinements in the program.

20 Q. And are these policies and procedures that we're talking  
21 about, are these the policies and procedures that you  
22 reviewed as part of your assignment on this case?

23 A. Yes, sir.

24 Q. And are these the policies and procedures that you  
25 concluded were appropriate given the regulatory guidance and

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1 custom in the industry?

2 A. Yes, sir, precisely.

3 Q. So can we please look at the next page, page 4. And in  
4 the middle of this page, there's a header that's titled  
5 "Suspicious Activity Monitoring." Do you see that,  
6 Mr. Grice?

7 A. I do, yes, sir.

8 Q. And what is Item Number 5 that the fed is requesting  
9 from M&I?

10 A. Item Number 5 is the list of customers and accounts  
11 designated as high risk for money laundering and then  
12 including a list of all MSBs, these money service  
13 businesses, these storefronts. So they want to see every  
14 person or entity that the bank has identified as high risk  
15 at the time. So each year you see this same question, and,  
16 again, the bank responds with their -- each iteration of  
17 that list as it changes over time.

18 Q. So there's some focus by the fed about what banks are  
19 doing in terms of identifying high-risk customers?

20 A. Yes, sir.

21 MR. SCHAPER: Can we look now, Mr. Herzka, at page  
22 8 of this document.

23 BY MR. SCHAPER:

24 Q. And there's another set of issues called "Suspicious  
25 Activity Reporting." Do you see that, Mr. Grice?

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1 A. I'm trying to. There we go. That helps. Yes, sir.

2 Q. Okay. And Item 29 is "A list of and access to  
3 Suspicious Activity Reports or SARs filed with FinCEN since  
4 the previous targeted BSA examination in June 2006."

5 Mr. Grice, based on your expertise, what is the  
6 fed asking for here?

7 A. We want a copy -- we're going to judge -- we, the fed,  
8 is going to judge the bank's judgment on suspicious and not  
9 suspicious. And this is an important part of that. They  
10 look at all of the SARs that the bank has determined  
11 during -- since the last exam. This is June 2007. This is  
12 asking since June 2006, send us all of the SAR information  
13 that you've collected, and we're going to read those  
14 carefully -- we, the fed, are going to read those really  
15 carefully and see if we agree with your determinations.

16 Q. You mentioned that it would cover both SARs that were  
17 filed, but also some instances when a SAR was not filed.  
18 What are you referring to in terms of instances where a SAR  
19 was not filed as it relates to this document request?

20 MR. ANTHONY: Objection, lacks foundation.

21 THE COURT: Overruled.

22 THE WITNESS: So, I mean, Item 30 is we want to  
23 see everything about the -- I mean, we've already asked for  
24 the procedures. Now we want to see all of the collected  
25 files, including the SARs and the not SARs. This was a new

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1 development during this time period where the fast way to  
2 examine a bank was not to read the SARs, but to read the not  
3 SARs. We want to see if we agree with the bank's decision  
4 to not file a SAR. And if we, the fed, are comfortable with  
5 your decision not to report it, that's a more efficient way  
6 maybe than reading about all of your suspicious customers.

7 So this is reflected -- left-hand side is the  
8 request. The column in the middle under "Bernita," this is  
9 Bernita Hile, and she's been tasked with gathering this  
10 information and making sure it gets sent off to the Federal  
11 Reserve.

12 BY MR. SCHAPER:

13 Q. And the right-hand column says, "Complete"?

14 A. Yes.

15 Q. Let's look further down this page, Mr. Grice, to Item  
16 33. And so this says, "A list of all wire transfers for the  
17 month of January and February 2007." Do you see that?

18 A. I do.

19 Q. Now, is your understanding, based on your work in this  
20 case, is that a list of all wire transfers for all customers  
21 of the bank during that period?

22 A. Yeah, that's what item --

23 MR. ANTHONY: Objection, inconsistent with motion  
24 in limine.

25 THE COURT: Overruled.

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1 THE WITNESS: I'm sorry. Can you repeat the  
2 question, please?

3 BY MR. SCHAPER:

4 Q. Do you understand this to be a list of all wire  
5 transfers for all customers for these months in 2007?

6 A. Yeah, that's the request. And then you see in the  
7 middle column the reference to Jeff. Jeff is the contact  
8 for the bank at the Federal Reserve, and whoever is writing  
9 this said, "Jeff agreed for us to use first week of January  
10 only due to large volume." So, I mean, I read this as there  
11 was a conversation about: Are you sure you want two months'  
12 worth because this is -- do you want to see this many  
13 thousands of wires? They worked out a compromise. We are  
14 going to send you a week in January, and then we will give  
15 you other forms of this data onsite later.

16 Q. Is that a week in January for all wire transfers  
17 throughout the bank?

18 A. Yes.

19 Q. And is this process that the fed engages in, is this  
20 called transaction testing?

21 A. Yes, sir.

22 Q. What does that refer to?

23 A. This is -- the fed teaches the banks that we're going to  
24 compare policies and procedures to the results of interviews  
25 and compare that to what we actually see in the bank. So

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1 it's a compare and contrast. You told us your system was  
2 this, your people said this, and now we want to see if it  
3 plays out in the transactions. So we're going to look at,  
4 in this case, give us all your wires, and if we disagree  
5 with -- if we find something irregular or suspicious, you'll  
6 have to answer for it.

7 MR. ANTHONY: Objection, move to strike, violation  
8 of pages 17 and 18 of the Court's *Daubert* ruling.

9 THE COURT: Overruled.

10 BY MR. SCHAPER:

11 Q. The last item I want to cover on this document,  
12 Mr. Grice, is on the next page, page 9. If we look at Item  
13 42, do you see the reference to "funds transfers"?

14 A. Yes, sir.

15 Q. And here the fed is asking for "Access to records of  
16 funds transfers (if possible, in Excel format) including  
17 incoming, intermediary, and outgoing transfers since the  
18 previous BSA examination in June 2006." What does that  
19 refer to?

20 A. This is a broader version of the same thing. So they're  
21 asking for the whole family of ways that banks can exchange  
22 money with each other.

23 So there are domestic wires and there are  
24 international wires. And international wires are on a  
25 different platform called SWIFT, which speaks its own kind

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1 of specialized language. And in international wires, there  
2 are usually three banks involved instead of two in a  
3 domestic transaction.

4 And so this is a request by the fed, basically  
5 give us all of your funds transfers records and put it in  
6 Excel so we can sort it, because when you sort it, you can  
7 find some things. So the fed is trying to get a leg up on  
8 possible fraud or possible irregular behavior inside the  
9 funds transfer area.

10 Q. So, Mr. Grice, the document that we've been looking at  
11 was for the 2007 fed exam of M&I; is that right?

12 A. Yes, sir.

13 Q. For other years where there were fed exams, were there  
14 similarly detailed requests for information sent to the bank  
15 in advance of the exam?

16 A. Yes, sir. They vary a little bit, maybe 20 percent  
17 changes from time to time, but they all have this general  
18 format.

19 Q. And were these kind of --

20 MR. SCHAPER: We can take that down. Thank you,  
21 Mr. Herzka.

22 BY MR. SCHAPER:

23 Q. Were these kind of document requests the only way that  
24 fed examiners could gather information from M&I?

25 A. No. They could -- they don't have to pick up the phone.

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1       They can just walk in. It's a very close relationship  
2       between the fed and the bank, so --

3       Q. Can they talk to bank employees?

4       A. Absolutely. They have unrestricted access to bank  
5       employees.

6       Q. Speaking about these fed exams, Mr. Grice, based on your  
7       experience, was the fed expecting perfection from the banks  
8       that they were examining?

9               MR. ANTHONY: Objection, calls for speculation.

10              THE COURT: Overruled.

11              THE WITNESS: No. I think that slide that  
12       looked -- was labeled "Continuous Improvement" captures what  
13       the expectation was. We're going to come in and look at  
14       you. We're going to make recommendations. I've never seen  
15       a bank that had no recommendations. There are always  
16       findings. It's the nature -- I think it's the nature of  
17       examinations generally that we want you to be a better  
18       student each time we see you, and also, as we've discussed,  
19       the expectations of the fed changed during this period as  
20       the focus went from old-fashioned money laundering for drugs  
21       to terror finance. As the emphasis changed, they kept  
22       tweaking what they wanted. So everybody got constant  
23       suggestions, and all the banks I've ever worked with or  
24       helped in their examination process, there's always a to-do  
25       list. It ranges from you must do it to you should do it,



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1 but there are always recommendations.

2 BY MR. SCHAPER:

3 Q. And when during the relevant time did the fed conduct  
4 BSA/AML examinations, again between 2002 and 2008?

5 A. I'm sorry. When --

6 Q. Yeah.

7 A. -- for M&I?

8 Q. Yeah.

9 A. Generally in the summers, but every year. It was an  
10 annual ritual.

11 Q. If we could look at, Mr. Grice, in your binder an  
12 exhibit marked for identification as DX-50073.

13 A. Yes, sir. I have it. Yes.

14 Q. Do you recognize this document, Mr. Grice?

15 A. I do. This is -- it's labeled "Follow-Up on Examiner  
16 Strongly Urged Recommendations" dated November 25, 2002.

17 Q. Did you rely on this document in forming your expert  
18 opinions in this case?

19 A. I did, yes, sir.

20 MR. SCHAPER: Your Honor, defendant offers  
21 DX-50073 into evidence.

22 MR. ANTHONY: Objection, Your Honor, for the same  
23 reasons you kept it out previously, foundation, relevance.

24 MR. SCHAPER: I think this was already ruled on.

25 THE COURT: Overruled.

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1 MR. SCHAPER: If we could put that up, Mr. Herzka,  
2 and focus in on the top portion of the document.

3 BY MR. SCHAPER:

4 Q. And, again, I think you said this, Mr. Grice, this is  
5 dated November 25, 2002?

6 A. Yes, sir.

7 Q. And it says, the first sentence -- well, can you read  
8 the first sentence for us?

9 A. "The BSA/AML compliance program is considered  
10 satisfactory; however, opportunities for improving the  
11 overall program were noted."

12 Q. Any surprise to you that even with a satisfactory  
13 result, there were opportunities for improvement noted?

14 A. No, sir. This is normal and customary.

15 Q. Did the fed conduct a review of the M&I BSA/AML program  
16 the following year, in 2003?

17 A. Yes, sir.

18 Q. And what was the rating of M&I's program after that  
19 examination?

20 A. You're asking about the 2003 exam?

21 Q. Yes.

22 A. It was rated inadequate was the one-word conclusion.

23 Q. Okay. So do you have a demonstrative that just kind of  
24 starts to catalog what the ratings were by year?

25 A. Yes, sir.

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1 Q. This is slide 10 of DD-60.

2 MR. SCHAPER: Don't put it up, please, yet,  
3 Mr. Herzka. I believe Your Honor has already ruled on any  
4 objections, so.

5 MR. ANTHONY: I'm sorry. Which slide?

6 MR. SCHAPER: Slide 10, Mr. Anthony.

7 MR. ANTHONY: I still need, for the record  
8 purposes, Your Honor, to maintain our objection so we'll  
9 object.

10 THE COURT: Understood. The objection is  
11 overruled.

12 MR. SCHAPER: Thank you, Your Honor.

13 Now if you would put that up.

14 BY MR. SCHAPER:

15 Q. So, Mr. Grice, we have, just as far as we've gotten so  
16 far, we've done 2002. That was a satisfactory rating?

17 A. Yes, sir.

18 Q. And you just testified 2003 was an inadequate rating.  
19 There's the words "Board Resolution" next to that. What  
20 does that refer to?

21 A. So this is the -- with an inadequate conclusion or an  
22 inadequate rating, the fed required the bank to take some  
23 corrective measures. And the fed has available to them  
24 several different tools they can use, ranging from mild to  
25 severe. The mildest of those corrective actions is a board

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1 resolution where the fed tells the board of directors of M&I  
2 Bank, we want you to adopt a program, it's like a recovery  
3 program, we want you to go into this resolution and resolve  
4 as a corporation that you are going to take some steps to  
5 fix whatever is required to be fixed. That was -- that's  
6 what occurred here.

7 Q. Just to be clear, did the fed take any more severe  
8 actions against the bank at this time?

9 A. No. The spectrum for what they can do is very long and  
10 precise, but this is the mildest of the sanctions.

11 Q. And in terms of the substance of the fed's exam that led  
12 to this inadequate result, what specifically were the  
13 examination findings focused on?

14 A. They dealt with training, with audit, with some risk  
15 rating issues tied to cash customers.

16 Q. What do you understand that to refer to?

17 A. They were concerned that the bank didn't have enough  
18 data to capture all of the possible transactions that might  
19 involve cash inside the bank. So at the time in 2003, the  
20 concern was customers who would come into a branch with cash  
21 and then ask to send out a wire or the reverse. They would  
22 go into a branch and they would receive a wire and then  
23 convert it to cash. So one of the concerns was we want to  
24 fix that -- if you think about money laundering as kind of a  
25 plumbing problem, we want to make sure the bank's systems

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1 are capturing that possible combination of transactions.

2 Q. Did the PCI account have any of the traits of the kind  
3 of wire into cash or cash into wire problem that you are  
4 describing?

5 A. No. I should add this was about the most common thing  
6 that I recall from this period, where, again, if you think  
7 about the complexity of a bank, people just hadn't figured  
8 out how to get reports that look at all parts of the bank  
9 simultaneously; so where you cross products, you know, going  
10 from a wire to cash or cash to wire.

11 Q. When you say it was the most common thing, what are you  
12 talking about?

13 A. The technology of banking keeps changing. And so in the  
14 early 2000s, people started using wires more commonly and  
15 then things like ACH. A lot of us get paid now  
16 electronically. That was an example of a product that's  
17 electronic, but the software didn't keep up for most banks  
18 with that new technology.

19 And so the remedial action for everybody was you  
20 need to make sure you fix this -- I'm calling it a plumbing  
21 problem, but it's money moving through a bank to a customer,  
22 and we want to make sure we capture that so we can report it  
23 to the federal authorities.

24 Q. When you say a problem for, I think you said the word  
25 "everybody," but are you referring, based on your

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1 experience, that this was a deficiency that was noted at the  
2 time for other banks?

3 A. This was extremely common. Again, we're two years after  
4 the PATRIOT Act, so the standards are rising very  
5 aggressively. And this was -- it functions like a speed  
6 trap. It was a new question that most banks weren't  
7 prepared for.

8 Q. Was there any mention of Ponzi schemes in the fed exam  
9 2003 letter?

10 A. No, sir.

11 Q. Did you also -- did you look at what M&I did to address  
12 the concerns that the fed expressed in its 2003 letter?

13 A. I did. I looked at the extensive back and forth between  
14 the bank and the Federal Reserve.

15 Q. And at a high level, before we get into any details, how  
16 would you describe the bank's response to this 2003 exam  
17 finding?

18 A. Robust, energetic. It was very aggressive in a good  
19 way. It was the bank completely satisfying, by my read,  
20 everything that was part of that 2003 examination. So if  
21 there was a recommendation or a criticism, it was addressed  
22 and it was addressed quickly.

23 Q. Did you prepare a slide that just goes to some of the  
24 specifics of the bank's response?

25 A. I did, yes, sir.

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1 MR. SCHAPER: Mr. Herzka, if you would, please,  
2 put up slide 11 of DD-60.

3 BY MR. SCHAPER:

4 Q. So let's go through these one at a time. What does the  
5 "action plan" refer to, and what is M&I's response -- what  
6 was M&I's response?

7 A. So, again, in response to that 2003 exam, the fed was --  
8 I'm sorry -- the fed told the bank, You need to first put a  
9 plan in place to fix all the things that we're recommending,  
10 kind of like a house inspection, we want to make sure you  
11 make a list of all the things that need to be fixed and then  
12 you have a program in order to get it resolved. And so a  
13 lot of the focus was on policies and procedures and this  
14 cash for wire, wire for cash thing I discussed earlier.

15 Q. Then there's a reference to an independent consultant.  
16 Did the fed want M&I Bank to hire an independent consultant?

17 A. Yes, sir. They were told to hire an independent  
18 consultant that the fed approved. The fed had to approve  
19 the hiring of the independent consultant, and then the  
20 consultant was to help build out all of the program changes  
21 that were identified by the Federal Reserve.

22 Q. Do you know who the individual was that was hired?

23 A. This is bittersweet. So, yeah, she's a competitor of  
24 mine. She was hired by M&I to fix all the things that  
25 needed to get fixed. Carole Beaumier was her name -- or is

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1 her name.

2 Q. Is she a highly capable -- I realize she's a competitor  
3 of yours, but is she a highly capable person in this area?

4 A. She's wonderful. I have no quarrel with her. She's  
5 very good.

6 Q. What does "enhanced customer due diligence program"  
7 refer to, and what did the bank do?

8 A. So this was -- again, keeping in mind this is 2003, so  
9 the PATRIOT Act has come online, we are now trying to  
10 identify high-risk or higher-risk customers. And that topic  
11 or question keeps getting more and more complicated as time  
12 goes by.

13 So in 2003, we're changing -- the bank was told to  
14 change their account opening procedures to capture more  
15 information about anticipated activity of that customer in  
16 the future. So what kind of activity you think your client  
17 will engage in in the future, and that first appears in '03.

18 Q. I think you testified earlier that the bank actually did  
19 a risk assessment in 2004?

20 A. That's right.

21 Q. And just then briefly, what does "transaction review"  
22 refer to?

23 A. So this was sort of the proof in the pudding. If  
24 you've -- what the fed wants is proof that you've done all  
25 the things they want you to do, and the proof they want is



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1 in the form of results of a look-back. So a team of people,  
2 either consultants or bankers, have to go and pick out  
3 transactions historically and test them and collect those  
4 results, use them to fix whatever they've identified, and  
5 reserve that information also for the Federal Reserve. So  
6 it's like a self test.

7 Q. Did M&I do any upgrades to its automated monitoring  
8 systems for its bank accounts?

9 A. It did. It modified two of the large systems that are  
10 automatically running in the background around the bank at  
11 the time.

12 One was called, I think, the CT31-500 program,  
13 which is a -- it's an M&I software package that looks for  
14 this wire to cash or cash to wire relationship.

15 And the other is called Rule 2, which was a  
16 specific test that -- I mean, it was a specific report that  
17 was generated that looked at customers, individuals and  
18 companies, that were using large amounts of cash, not above  
19 \$10,000, but potentially interesting amounts of cash. I  
20 think it took it down to \$3,000. So the bank is trying to  
21 broaden the transactions it's looking at to increase the  
22 number of potential hits.

23 Q. Did M&I keep the fed posted on its progress and the  
24 actions it was taking as part of this response?

25 A. Yeah. That's what I think contributed to the success,

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1 was they were constantly updating the fed on what they were  
2 finding from all of these changes, including the transaction  
3 review.

4 Q. And when you say "contributed to the success," did the  
5 fed then conduct another examination of M&I the following  
6 year, 2004?

7 A. That's right. So in December 2006 -- I'm sorry,  
8 December 2003, the inadequate examination ends; and in June  
9 or July of 2007, the next annual exam starts. So there is a  
10 very short period of time between when they close out the  
11 2003 exam and when they start the 2004 exam.

12 Q. What was the result of the 2004 exam?

13 A. It was satisfactory.

14 Q. Was it -- do you recall was satisfactory the word used  
15 or was it adequate?

16 A. I'm sorry. It was adequate. That's another one of the  
17 changes is that the fed changed the word they used to  
18 describe this effectively pass/fail test, but so it was  
19 adequate.

20 Q. And did you prepare a slide that talks about the fed  
21 exam results for the period of 2004 to 2008?

22 A. Yes, sir, I have a summary.

23 MR. SCHAPER: Mr. Herzka, if you could please put  
24 up DD-60, slide 12, just for the year 2004.

25 BY MR. SCHAPER:

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1 Q. Did the fed conduct a review of M&I's BSA/AML program in  
2 2005?

3 A. They did, yes, sir.

4 Q. And what was the result of that review?

5 A. It was also called adequate.

6 Q. Mr. Grice, if you could please look at a document that's  
7 already in evidence at DX-50356.

8 MR. SCHAPER: If you would please put that up,  
9 Mr. Herzka.

10 A. Yes, sir.

11 Q. Is this the fed exam letter from the 2005 exam of M&I  
12 Bank's BSA/AML program?

13 A. It is, yes, sir.

14 Q. And if you look at the second paragraph on this page,  
15 just very briefly could you just describe, what is the fed  
16 doing in this exam?

17 A. The paragraph that begins with "the scope"?

18 Q. Yeah.

19 MR. SCHAPER: And if you could also include the  
20 bullets below that, Mr. Herzka.

21 A. Yeah, this is the -- kind of the boilerplate language.  
22 They tell you what they are going -- actually, they tell you  
23 before the exam starts, and here they are telling you after  
24 the exam ended what they looked at. So, again, the system  
25 of internal controls, testing, the individual responsible

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1 for compliance, and training. So these are the same  
2 elements that we saw in the examination manual an hour ago.

3 Q. And if you look just below that, the next paragraph,  
4 there's a reference to transaction testing having been  
5 performed. Do you see that?

6 A. I do.

7 Q. And is that what you testified to a bit ago in terms of  
8 looking at actual transactions within the bank's files?

9 A. Yes, sir.

10 Q. And if you turn to the next page, Mr. Grice, just to  
11 confirm, in this middle paragraph, is this where the fed  
12 states its overall rating that the bank's program was  
13 adequate?

14 A. Yeah, I think that's in bold. I can't tell with my  
15 eyes, but the program is adequate, the bank's AML program is  
16 adequate.

17 Q. And then there's also a reference here at the bottom  
18 about rescinding a board resolution. What does that refer  
19 to?

20 A. I think this is in bold, but, again, it's hard to tell.  
21 It's an important conclusion that the bank has been  
22 successful enough in fixing things that we think it's safe  
23 now for the bank to eliminate this board resolution, they  
24 can end it.

25 Q. So is this board resolution, this is a reference to what

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1       you referred to as the least severe sanction that the bank  
2       could get in 2003?

3       A.   That's correct.

4       Q.   And then in 2005, that is lifted by the fed, correct?

5       A.   And, again, in my opinion, this is significant. I know  
6       what it's like to get these things lifted. This is a very  
7       successful effort to address all the concerns made by the  
8       fed, and, as a consequence, the fed agrees and the board  
9       resolution goes away.

10      Q.   And if we go back to slide 12 of DD-60, did the bank --  
11      did M&I Bank get evaluated again in 2006 and 2007?

12      A.   They did, yes, sir.

13      Q.   And do you recall what the conclusions that the fed made  
14      were?

15      A.   The bank remained adequate in both years.

16      Q.   And adequate or was satisfactory also a word that was  
17      used by the bank--

18      A.   I'm sorry. Yes, satisfactory. Again, they're  
19      interchangeable in my mind, but satisfactory is the  
20      conclusion for both.

21      Q.   In these years when the bank was getting either adequate  
22      or satisfactory conclusions by the fed, were there still  
23      actions that the fed expected the bank to take or improve  
24      on?

25      A.   Always. Again, in my experience, always. I've never

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1       seen a bank that did not have recommendations as part of  
2       this exam process.

3       Q.   Did the fed conduct an exam of M&I in 2008, the year  
4       that the Petters Ponzi scheme became public?

5       A.   They did. I think they were there in July of 2008, and  
6       the scheme was unveiled or revealed in September 2008.

7       Q.   If we could look at an exhibit that's already in  
8       evidence, it's DX-50710, and, Mr. Grice, if you would please  
9       turn to that in your binder. Do you see this is an August  
10      18th, 2008, letter from the Federal Reserve Bank of Chicago  
11      to M&I?

12      A.   Yes, sir.

13      Q.   And is this a document that you reviewed in connection  
14      with your report?

15      A.   Yeah, this is the report of the examination from that  
16      2008 exam.

17      Q.   And so this is August 18th, 2008. When did the Ponzi  
18      scheme that Petters perpetrated get publicly revealed?

19      A.   Late September, so the following month.

20      Q.   And if you look at the second page here --

21               MR. ANTHONY: Same objections, Your Honor.

22               THE COURT: Overruled.

23      BY MR. SCHAPER:

24      Q.   If you look at the second page here, first of all, if we  
25      look at the first full paragraph on the top that starts "In

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1 addition," do you see the reference to "Transaction testing  
2 was performed to assess the effectiveness of internal  
3 controls and to determine the accuracy and timeliness of the  
4 identification, monitoring, and reporting of suspicious  
5 activity"?

6 A. I do, yes, sir.

7 Q. Is that the same kind of transaction testing you  
8 testified about earlier in terms of a range of bank customer  
9 transactions?

10 A. Yes, sir.

11 Q. And if you look at the "Overall Assessment" below  
12 that --

13 MR. ANTHONY: Your Honor, we're going to assert --  
14 re-assert our objection. This exhibit was excluded a few  
15 days ago in connection with another witness's testimony, and  
16 we think it remains objectionable for those reasons then and  
17 they are now.

18 MR. SCHAPER: This came in through --

19 MR. ANTHONY: Excuse me. It violates your *Daubert*  
20 ruling as well.

21 MR. SCHAPER: This exhibit came in with  
22 Ms. Ghiglieri, Your Honor.

23 THE COURT: Overruled.

24 BY MR. SCHAPER:

25 Q. Mr. Grice, if you'd look at the part of the page that

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1 says, "Overall Assessment."

2 MR. SCHAPER: Mr. Herzka, if you would blow that  
3 up, please.

4 BY MR. SCHAPER:

5 Q. And so, again, this is a month before the Petters Ponzi  
6 scheme broke. Can you read the first sentence of this  
7 overall assessment?

8 A. "Overall, the Banks have created a satisfactory AML  
9 compliance risk management program, which includes  
10 compliance with BSA, USA PATRIOT Act and OFAC."

11 Q. And then the fed continued that "Management has  
12 formulated and implemented an effective written program that  
13 establishes an adequate system of internal controls, assigns  
14 management responsibility for coordinating the program at an  
15 appropriate level, provides training to all applicable  
16 employees including senior management and the board of  
17 directors, and requires an annual independent review of the  
18 program." Do you see that?

19 A. I do.

20 Q. Again, in this document and in this exam, Mr. Grice, are  
21 there some recommendations for what the bank could do  
22 better?

23 A. Yes, sir. In this and all of them, there's always a  
24 to-do list.

25 Q. Do you recall Ms. Ghiglieri's testimony --



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1 MR. SCHAPER: We can take that down, Mr. Herzka.

2 BY MR. SCHAPER:

3 Q. Do you recall Mr. Ghiglieri's testimony that she used  
4 the same methodology that she applied when she was a bank  
5 examiner to conclude that M&I's BSA/AML program was severely  
6 flawed during the relevant period?

7 A. I recall her saying that, yes, sir.

8 Q. Is Ms. Ghiglieri's testimony supported by the record in  
9 your view?

10 A. Not in my view, no, sir.

11 Q. Why not?

12 A. It's inconsistent with examination guidelines from the  
13 fed that were in place during the relevant years. It's also  
14 inconsistent with industry custom and practice. It's  
15 inconsistent with my experience and my direct judgment and  
16 opinion about the sufficiency of the policies and procedures  
17 and the quality of the program. I just don't -- I don't  
18 know -- I don't recognize her basis for that.

19 Q. Is the opinion that you're giving consistent with the  
20 fed exam results that we just looked at?

21 A. Yes, sir.

22 Q. Let's move away from the fed exam results, Mr. Grice.

23 MR. SCHAPER: Your Honor, I'm going to move to  
24 another topic, so I just want to check in about when the  
25 Court would like to take a midmorning break?

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1 THE COURT: Yes. Thank you. We will take our  
2 midmorning break now.

3 Members of the Jury, please remember the  
4 instructions you've been given and continue to abide by  
5 them. We'll plan to resume at 11 -- 10:30. 15 minutes.

6 LAW CLERK: All rise.

7 (Jury excused)

8 **IN OPEN COURT**

9 **(JURY NOT PRESENT)**

10 THE COURT: We will be back in session at 10:30.

11 MR. ANTHONY: Your Honor, before you go, there's  
12 one exhibit that I think needs clarification. Mr. Schaper  
13 offered the entire expert report, I think, and I think you  
14 meant to offer just the resumé pages, and I don't know that  
15 the record is clear on that.

16 MR. SCHAPER: I will --

17 MR. ANTHONY: I think you meant pages 148 through  
18 151 of DX-50902, and I think you offered all of 50902.

19 MR. SCHAPER: I meant what you said, and so that's  
20 all I intended to offer. So I appreciate that  
21 clarification.

22 MR. ANTHONY: So maybe you can just pull those  
23 pages out or highlight them.

24 MR. SCHAPER: Yes. Thank you.

25 MR. ANTHONY: I just wanted to clarify that.

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1 THE COURT: So it is admitted as indicated by the  
2 parties in this colloquy.

3 MR. ANTHONY: Pages 148 through 151 of DX-50902 is  
4 admitted. The balance of the report is excluded.

5 THE COURT: Thank you.

6 MR. SCHAPER: The balance of the report is not in  
7 evidence. It's not excluded. Thank you.

8 MR. ANTHONY: Right.

9 (Recess taken at 10:17 a.m.)

10 \* \* \* \* \*

11 (10:33 a.m.)

12 **IN OPEN COURT**

13 **(JURY PRESENT)**

14 THE COURT: Please be seated.

15 BY MR. SCHAPER:

16 Q. Okay, Mr. Grice, we've covered the fed's conclusions. I  
17 would like to talk now some more about M&I's monitor -- how  
18 it monitored accounts. Between 2002 and 2004, did M&I have  
19 any account monitoring in place?

20 A. Yes, sir, it had several systems that were running as  
21 part of the core operating system of the bank.

22 Q. And just at a very high level, can you explain what  
23 those were.

24 A. Yeah. These were sort of industry custom automated  
25 packages that look for things like check kiting,

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1 insufficient funds, overdrafts, high-velocity transactions,  
2 but they're automated reports that I think some of the  
3 bankers talked about they would come to work and they would  
4 see overdraft reports the first thing in the morning. These  
5 are the kind of reports that banks routinely looked at  
6 during the period.

7 Q. So was having that kind of account monitoring in place  
8 at M&I, was that consistent with industry custom and  
9 practice?

10 A. Yes.

11 Q. Did there come a time when M&I made changes to its  
12 account monitoring systems?

13 A. It did. I would say between 2003 and 2005, you see  
14 efforts made by the bank to upgrade. I think Ms. Ghiglieri  
15 used the term "bolted on." They added additional systems on  
16 top of these core operating systems that were already in  
17 place at M&I.

18 Q. And was that consistent with custom and practice at the  
19 time?

20 A. Yes, that was responsive to the fed's pressure to  
21 improve the technology really. It wasn't different  
22 information. It was just packaging it in a way that was  
23 even more useful to the bank.

24 Q. And was M&I the only bank in your experience that was  
25 getting pressure from the fed to upgrade those kind of

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1 systems?

2 A. No. This was very much a national focus. Everybody was  
3 being told to up their game.

4 Q. And then did M&I, in 2005, implement a system called  
5 Searchspace?

6 A. It did.

7 Q. Is Searchspace a software that you were familiar with  
8 before your work on this case?

9 A. Yes, sir, I worked at it at several banks prior to my  
10 engagement in this assignment. So I have seen it. I am  
11 familiar with it.

12 Q. Do you have a sense of how Searchspace was regarded in  
13 the industry in terms of the quality of the product?

14 A. It was the gold standard until really the end of this  
15 period, 2007, 2008, when like all the devices in our pockets  
16 got upgraded, artificial intelligence was introduced later.  
17 But Searchspace was -- I don't want to paint it as more than  
18 it was. It was a very elaborate system for taking existing  
19 information and rolling it up in a useful way so that  
20 bankers could even better calibrate the risk of their  
21 clients. That gets then replaced by even more sophisticated  
22 systems in the late 2000s.

23 Q. That's after the relevant period of 2002 through 2008?

24 A. Yes, sir.

25 Q. At a high level, Mr. Grice, how did Searchspace work?

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1 A. It's a rules-based system. So it's not AI. It doesn't  
2 learn. It just tabulates. It notices -- the metaphor I  
3 always think of is -- I'm not a fisherman. My late  
4 father-in-law was a fisherman, but it's kind of a filter or  
5 a net for catching fish.

6 And so it's running 24/7 in all of the  
7 departments, products, services, and locations of a bank,  
8 and it catches fish that are outliers, you know, big,  
9 different, unusual. So it's trying to flag things so that a  
10 human could come and evaluate them to see if they are  
11 potentially suspicious or not.

12 Q. And so is that what would happen if there was something  
13 that was detected by Searchspace, that would be reviewed by  
14 somebody -- an employee at the bank?

15 A. Exactly. So the transaction occurs, Searchspace finds  
16 it, and if it's of a certain dimension, if it has certain  
17 characteristics, it rolls it up and it kind of nominates it  
18 for an AML analyst at M&I who would then evaluate it.

19 Q. Are you familiar with alert thresholds?

20 A. Yes, sir.

21 Q. What does that refer to?

22 A. It's a point system. So Searchspace is calibrated --  
23 there's a software that comes -- there's an algorithm built  
24 inside Searchspace that was its default logic. And then you  
25 could also add or modify the point system based on your

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1 experience. So if you really cared about international  
2 transactions even more, it allowed to you modify it. My  
3 understanding is M&I took the algorithm that was installed  
4 with the installation developer and used that and that gave  
5 it this population of alerts that we've heard about during  
6 the trial.

7 Q. And did you see Ms. Ghiglieri use a slide that had alert  
8 scores and then red alarm bells at the top?

9 A. Yes.

10 Q. And the alerts were some number of -- some number above  
11 the 75-point threshold? Did you see that?

12 A. I did, yes.

13 Q. At the top of each one, there was a red alarm bell?

14 A. To my mind, it looked like a fire, but it was a  
15 characterization of more risk, I think, based on the number.

16 Q. Well, is the distance between the alert threshold and  
17 the alert score, is that significant from a BSA/AML risk  
18 perspective?

19 A. That's not how I recall people at the time using it or  
20 what the developer told us at the time. So I think it's a  
21 misinterpretation or -- it's applying today's standard  
22 backwards. I just don't think that's the way to think about  
23 this.

24 Q. Well, let me ask you this: Is it the case that any  
25 alert that was over the threshold would get reviewed by an

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1 AML analyst?

2 A. Yes.

3 Q. And was there any different kind of review based on how  
4 far above the threshold an alert was?

5 MR. ANTHONY: Objection, leading, lacks  
6 foundation.

7 THE COURT: Sustained.

8 BY MR. SCHAPER:

9 Q. Mr. Grice, do you understand, was there any connection  
10 between the alert score and how an AML analyst reviewed an  
11 alert?

12 A. No. You either were reviewed or you weren't. You  
13 either were above the threshold or you weren't, and all  
14 cases -- or all alerts above the threshold were treated  
15 exactly the same is my understanding and also my  
16 recollection from other banks in the same time period.

17 Q. So to that last point you just testified to, was that  
18 way of reviewing alerts the custom and practice in the  
19 industry?

20 A. Yes.

21 Q. Did a Searchspace alert necessarily mean that the  
22 activity in the account was suspicious?

23 A. Not at all. And this is an important point. It's  
24 strictly telling you that this is something you might want  
25 to look at. I keep talking -- thinking about it as a



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1 nomination. It's saying, in our expert opinion as a  
2 software package, we think this is something that you may  
3 want to consider. You may choose to do nothing with it, but  
4 you may also choose to use that as a basis for an  
5 investigation, but it's the bank that has to make the  
6 determination.

7 Q. How -- again, in general, how would M&I's AML analysts  
8 review an alert?

9 A. They had several generations of desktop procedures,  
10 internal instructions that the bank developed for the  
11 benefit of its own employees. There's no requirement that  
12 you have like a user handbook or rules for your AML  
13 analysts, but the bank had all these internal operating  
14 systems that they wrote and developed for the AML analysts  
15 and a review procedure and then all that fed up to a SAR  
16 Committee.

17 So the bank built out the systems around  
18 Searchspace, and that's all the bank's election. This is  
19 discretionary. This is not a rule or a requirement of the  
20 government. This is the bank choosing to do this to help  
21 them use the software better.

22 Q. And was that approach to Searchspace consistent with  
23 custom and practice in the industry?

24 A. Yes, sir, but I want to emphasize that Searchspace was  
25 expensive. This was the gold standard at the time and so it

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1 was used, but it was not used commonly in banks this size.  
2 So I think it's significant that the bank chose this system  
3 as opposed to others. The bank had -- the bank had its own  
4 systems, right? Metavante, which was owned by M&I at the  
5 time, provided software systems that accomplished this goal  
6 to other of my clients. Searchspace was where you went if  
7 you wanted the most elaborate system that existed at the  
8 time, and so it was used by the leaders in the industry.

9 Q. What types of information did analysts review for  
10 business customers?

11 A. They would look at, again, the onboarding information;  
12 who is the account owner, who is the authorized signer, and  
13 they would look at history, so what is the transactional  
14 history of this customer. And as part of that, they would  
15 understand the questions we looked at earlier about  
16 geography; is this customer doing international transactions  
17 or not, what types of products is it using or not. And so,  
18 again, we're using this risk-focused approach even in the  
19 way we think about reviewing our own customers. So a  
20 low-risk customer is low risk, and a high-risk customer is  
21 high risk. You care a lot about alerts or hits on high-risk  
22 customers.

23 Q. Regardless of how the bank thought about a particular  
24 account in terms of high risk or low risk, did AML analysts  
25 still review each alert that alerted in the Searchspace

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1 system?

2 A. Yes, they all got treated the same.

3 Q. You mentioned that analysts would look at the kind of  
4 prior history of an account. Was there anything improper  
5 about analysts doing that?

6 A. I've thought about this a lot. At the time, you know,  
7 we were told to know your customer and here's a tool for  
8 knowing your customer. You have to understand history to  
9 understand the risk of the customer, and so I don't  
10 understand -- you know, my opposite, Ms. Ghiglieri, seems to  
11 be arguing that it's improper to look at history; but I  
12 think if I don't look at history, I am blinding myself to  
13 knowledge that the bank has about history. So it's  
14 reasonable, it's industry custom and practice, and it was  
15 consistent with guidance from the fed to look at and  
16 understand the history.

17 Q. Well, can you give us an example of how a customer's  
18 transaction in any given month might be inconsistent with  
19 its prior history.

20 A. Sure. So you take a customer whose normal transactions  
21 are, you know, my dentist or a travel agency or a storefront  
22 selling newspapers, they probably do cash and checks during  
23 this time frame.

24 If they were to suddenly engage in wire  
25 transactions, that might be interesting, especially if they

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1 did international wire transactions, that would be very  
2 interesting. That would be a change in the way they do  
3 business at the bank. Or, likewise, if you take a PCI  
4 account, it is doing domestic wires primarily. If it  
5 switched and started doing cash or primarily checks, that  
6 would be interesting. So it's the change in stripes of the  
7 customer that's significant.

8 Q. Based on your knowledge of the regulatory landscape at  
9 the time and the custom and practice in the industry, were  
10 analysts evaluating alerts expected to perform a detailed  
11 investigation of every transaction in a customer's account?

12 A. No, sir.

13 Q. Were analysts evaluating alerts expected to understand  
14 the entire transaction structure of each of their customer's  
15 businesses?

16 A. Absolutely not.

17 Q. Were analysts evaluating alerts expected to investigate  
18 exactly what funds that were being transferred out of the  
19 account would be used for?

20 A. Absolutely not.

21 Q. What would happen, Mr. Grice, when an analyst at M&I  
22 determined after review that the activity flagged in an  
23 account was not suspicious?

24 A. I'm sorry. Could you repeat that, please?

25 Q. Sure. When an AML analyst was reviewing an account,

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1 what happened if after their review they determined that the  
2 alert and the activity was not suspicious?

3 A. They would close the alert. They would provide some  
4 rationale. There was a condition or a code that would  
5 explain why they're closing that alert, why their conclusion  
6 is this should not be escalated to a case that should be  
7 investigated for suspicious activity.

8 Q. And was what you've just described consistent with  
9 custom and practice in the banking industry at the time?

10 A. Yes, sir.

11 Q. You testified earlier that during this period you played  
12 a role as the interim compliance manager at several banks  
13 like M&I; is that correct?

14 A. That's correct.

15 Q. And in that role you actually had to supervise AML  
16 analysts; is that right?

17 A. I trained them. I supervised them. I wrote procedures.  
18 I would tell them how much of an investigation to do, when  
19 to stop, what sufficiency looked like, et cetera.

20 Q. And I believe in the capacity when you were working at  
21 banks there, you testified that the fed was supervising your  
22 work; is that right?

23 A. Yes, sir.

24 Q. Now, did that set of experiences inform the opinions  
25 that you've just given?

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1 A. Absolutely, yes, sir.

2 Q. Now, Ms. Ghiglieri testified about the amount of time  
3 that it took for M&I analysts to review alerts. Do you  
4 recall that testimony?

5 A. I do, yeah.

6 Q. Based on the regulatory requirements at the time,  
7 Mr. Grice, did AML analysts have to review alerts within a  
8 certain time frame?

9 A. No. She spoke to two things really, the amount of  
10 time -- the number of hours that would be devoted to  
11 reviewing a situation, but also the number of days that  
12 would elapse. She seemed to suggest that there was a clock  
13 ticking on how promptly the alert was investigated.

14 Q. Is there -- in the bank regulations, is there some  
15 guidance relating to the timing of reviewing suspicious  
16 activity?

17 A. There is. It's quite precise.

18 Q. And what is it?

19 A. It begins -- so the beginning of this clock is upon  
20 determination that something is suspicious.

21 So just as a work process, this would have to be  
22 an alert that was reviewed where the conclusion was we need  
23 to investigate it. That investigation is done and now  
24 we're -- we've established enough information that it is  
25 suspicious. So the organization has sufficient information

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1 and they've concluded that it is suspicious.

2 Now the clock or the calendar starts counting.

3 And because it's the federal government, the calendar is  
4 either 30 or 60 days. So you can have even more time if you  
5 need it because the government wants a high-quality work  
6 product. They want a good investigation with good results  
7 that they can use in law enforcement.

8 Q. And just to be clear, in terms of M&I's review of the  
9 PCI account, did it ever get to the point where there was a  
10 determination that activity in the account was suspicious?

11 A. No, none of the, I think, 39 alerts for PCI ever rose to  
12 the level where there was a determination of suspicious.

13 Q. So that 30-day clock that you are talking about, that  
14 didn't apply to M&I's review of PCI's account?

15 A. Yeah, it was irrelevant because nothing ever got that  
16 far. It didn't get escalated to that point.

17 Q. Did M&I have any internal policy about reviewing alerts  
18 within 30 days?

19 A. Yeah, they had an internal instruction, and I can't  
20 recall the exact language, but it was -- I would call it an  
21 instruction, where they wanted alerts to be evaluated on a  
22 timely basis and I think the time they identified was  
23 30 days, but I'm --

24 Q. Do you recall what it was 30 days from in terms of the  
25 alert?

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1 A. It was from the opening of the, I think it was -- it's  
2 either called a case or a file. So the alert has occurred,  
3 the event has occurred which caused Searchspace to generate  
4 an alert. I'm sorry. This sounds confusing. Once that  
5 alert is created, it is handed to -- or it is put in the  
6 queue for an AML analyst. So when the AML analyst opens  
7 their queue and begins the investigation, that now starts  
8 that clock, is my understanding.

9 Q. Do you agree with Ms. Ghiglieri's views that --  
10 criticizing the timeliness of M&I's review of alerts?

11 A. No. I think she is precisely incorrect about this.

12 Q. Let's talk about M&I's monitoring of the PCI account.  
13 Did you look at how M&I monitored PCI's account?

14 A. I did.

15 Q. And based on your review and expertise, was M&I's  
16 monitoring of the PCI account consistent with M&I's policies  
17 and procedures during the time?

18 A. Yes, sir.

19 Q. And was M&I's monitoring of the PCI account consistent  
20 with custom and practice in the banking industry during the  
21 time?

22 A. Yes, sir.

23 Q. Are you familiar with the different groups at M&I who  
24 were responsible for monitoring customer accounts?

25 A. Yes, sir. I think we've heard from almost -- maybe all



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1 of them, in fact.

2 Q. And did you prepare a demonstrative on that subject?

3 A. Yes, sir.

4 MR. SCHAPER: Mr. Herzka, if you could just put up  
5 DD-60, slide 13.

6 BY MR. SCHAPER:

7 Q. This is titled, Mr. Grice, "M&I Corporate Compliance  
8 Structure." Can you just tell us what you are covering  
9 here.

10 A. Yeah, I'm trying -- actually, this is taken from a bank  
11 document that was provided to the fed that summarized kind  
12 of the team approach, you know, the units of the  
13 organization that were involved in detecting, investigating,  
14 and reporting suspicious activity.

15 So on the far left -- both the far left and the  
16 far right are the business bankers and the business units,  
17 so people like Ed Jambor -- Mr. Jambor, Mr. Flynn.

18 Corporate Compliance AML Monitoring Group is the  
19 several witnesses we have heard from, Mandy Ramlow,  
20 Ms. Maltsch, et cetera.

21 Corporate security is Mr. Haller. So it's the  
22 check fraud unit, the folks that think about that type of  
23 suspicious activity.

24 And then the fourth column is the Money Transfer  
25 Center, the MTC, or the Money Services Center and this is --

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1 I forget the gentleman's name.

2 Q. Mr. Neufeldt?

3 A. Yes. He appeared by video. Mr. Neufeldt described how  
4 the wire function operated and kind of the role it played in  
5 both performing wires, but also resolutions of problems,  
6 quality control, and ultimately -- he was also part of the  
7 AML Committee of the bank -- its relationship to the  
8 investigation process generally.

9 Q. And is this kind of structure unusual for a bank like  
10 M&I?

11 A. No. This is very common.

12 Q. You mentioned corporate security and check monitoring  
13 for check fraud. What's an example of check fraud?

14 A. Well, check fraud is if I take your checkbook out of  
15 your pocket while you are out of the room and I start  
16 signing your name and writing checks to myself. That would  
17 be the simplest example.

18 Q. Did you see any check fraud with respect to the PCI  
19 account?

20 A. None.

21 Q. So before M&I implemented Searchspace, was PCI's account  
22 monitored?

23 A. Yes, sir.

24 Q. And did activity in PCI's account ever alert prior to  
25 the implementation of Searchspace?

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1 A. It did from time to time.

2 Q. And was any of that activity ever deemed to be  
3 suspicious?

4 A. No.

5 Q. Was M&I monitoring wire account activity prior to  
6 implementing Searchspace?

7 A. It was, using these systems I described earlier off of  
8 the core operating system of the bank.

9 Q. And were those systems consistent with custom and  
10 practice in the banking industry at the time?

11 A. Yeah.

12 And I should add we've been talking about AML, but  
13 these systems are also dedicated to another really important  
14 purpose in the war on terror, which is blocking transactions  
15 involving enemies of the United States, so a wire to  
16 bin Laden or having a customer relationship with someone who  
17 was a friend or family member, business associate of one of  
18 the 9/11 hijackers.

19 So the bank had a very elaborate process also to  
20 accomplish that in addition to looking for, quote, unquote,  
21 suspicious activity.

22 Q. Now let's go to the time after Searchspace was  
23 implemented and how M&I monitored the PCI account.

24 I think you have said that the PCI account  
25 alerted, your testimony was, 39 times?

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1 A. There was some test alerts also, but 39 actual alerts  
2 generated by Searchspace were evaluated by the AML analysts.

3 Q. And did you review all 39 of those alerts in forming  
4 your opinions in this case?

5 A. I did, and I think we have seen about half of them in  
6 the courtroom.

7 Q. Did you discuss all 39 in the report that you wrote?

8 A. No. In the report I'm describing a very elaborate  
9 system, so I looked at the first three alerts that were  
10 generated for PCI activity as exemplars, as examples of how  
11 this process unfolded. I didn't look at all 39 -- I mean, I  
12 didn't discuss all 39 in the report.

13 Q. But you reviewed all 39 in detail?

14 A. I did.

15 Q. What was the reason for the vast majority of alerts on  
16 the PCI account?

17 A. That the activity in the PCI account was greater than  
18 its peer group, usually in terms of number and dollar  
19 volume. So it's by count. There were more wires in PCI's  
20 typical month than for most business customers of the bank.  
21 And the volume of -- the dollar total of those wires was  
22 also greater than most of the business customers of the  
23 bank.

24 Q. Mr. Grice, based on your review and expertise, was the  
25 fact that there were frequent alerts for the PCI account a

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1 red flag of suspicious activity, as Ms. Ghiglieri has  
2 suggested?

3 A. No.

4 Q. Why were those frequent alerts not red flags of  
5 suspicious activity?

6 A. In my report I describe this frequent alert for PCI's  
7 wire activity by count and by volume as artifacts of PCI's  
8 business. So this is a coincidence that PCI did almost all  
9 of its activity through the wire room, both PCI and of the  
10 bank.

11 So given that they were large users of wires and  
12 their wires were typically larger than the dentist or the  
13 newspaper vendor, they alerted commonly, so almost monthly.  
14 So it's an artifact of the nature of what the bank documents  
15 reflected as the PCI business.

16 Q. Is there -- you mentioned that PCI primarily did its  
17 business through wires. Is there anything inherently  
18 suspicious about a customer of a bank primarily transacting  
19 in wires?

20 A. No. There are lots of customers that choose wires as  
21 their primary source of transmission because they don't want  
22 to lose the time for a check to go by the mail system, they  
23 don't want to touch cash. So it's convenient. So for some  
24 customers -- it's a modest fee you have to pay to send or  
25 receive a wire. It's worth the inconvenience of that fee to

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1 get the benefit of that speedy transmission.

2 Q. And I think you've testified in terms of who reviewed  
3 Searchspace alerts at M&I. It was the AML analysts?

4 A. Yes, sir.

5 Q. And, again, to your knowledge, what were the results of  
6 the reviews of the PCI account alerts?

7 A. These 39 were closed due to -- the activity in the  
8 account that was reviewed was consistent with the prior  
9 transactional activity of PCI.

10 Q. Was a full case review warranted for any of the closed  
11 alerts for the PCI account?

12 A. Not in my opinion based on the information available at  
13 the time.

14 Q. And were the decisions made by the AML analysts in  
15 accordance with M&I's BSA/AML policies and procedures?

16 A. Yes, sir.

17 Q. I would like to take a look at just a couple alerts,  
18 Mr. Grice.

19 MR. SCHAPER: And this is an exhibit already in  
20 evidence. It's P-183. If we could go to page 37,  
21 Mr. Herzka.

22 BY MR. SCHAPER:

23 Q. Just focusing on the top portion of this page,  
24 Mr. Grice, what is this that we are looking at?

25 A. So we are looking at the beginning of the documentation

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1 on the Alert 64556. And then the title, it says, "Alert  
2 64556, AML Monthly." So it's an alert based on monthly  
3 activity. The closed-expected activity is the conclusion  
4 reached by the AML analyst.

5 And as you read down, the alert summary describes  
6 the customer ID, the customer name, who it was assigned to,  
7 and you can see some of the details about what's behind this  
8 alert or what caused this alert to occur in the first place.

9 Q. If we take a look at the next page, which is 38, and  
10 look at the top several entries, which go over from the  
11 bottom of 37 to 38, what was the reason that there was an  
12 alert on the PCI account?

13 A. Because of a month's worth of wire activity. I think it  
14 was March of 2005, if I recall.

15 Q. And what information would be relevant to look into here  
16 to determine if the activity was suspicious?

17 A. This is the beginning of Searchspace. So it's one of  
18 the first alerts that occurred -- I'm sorry. I was  
19 misreading the date. This is June of 2006.

20 So this is -- we would want to understand who is  
21 the customer, what is the nature of their business. And  
22 then we would want to compare the activity that caused the  
23 alert, the month of wires that generated the alert, to what  
24 we see in the history for this customer, is that transaction  
25 activity consistent with the prior transaction activity.

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1 Q. And looking up here on the screen, does this reflect an  
2 effort by the analysts to look at what the business of the  
3 customer was?

4 A. Yes, sir. This is -- I believe this is Mary Pesch.  
5 This is her maiden name. And I believe we discussed -- this  
6 was discussed earlier in the trial, but this is a summary of  
7 her understanding of -- or the documents that were reviewed  
8 about PCI and it's an attempt at explaining who PCI is, the  
9 nature of the transactional activity --

10 MR. ANTHONY: Objection, Your Honor, testifying as  
11 to what's in the mind of a bank employee. He can testify as  
12 to what's on the page, but not what's in her mind.

13 THE COURT: Sustained.

14 BY MR. SCHAPER:

15 Q. Mr. Grice, if you could continue, but please just focus  
16 on what information is on the document.

17 A. Yes, sir. Can you repeat the question?

18 Q. Yes. Does the information on the document reflect an  
19 effort to look at the customer's business?

20 A. Yes, sir. This is part of the -- this is part of the  
21 supporting background that informs the conclusion that  
22 appears later in the document.

23 MR. SCHAPER: Now if we could look at the,  
24 Mr. Herzka, at the next several rows.

25 BY MR. SCHAPER:



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1 Q. Is there an indication here as to whether the analyst  
2 looked at who wires were sent to and received from?

3 A. Yes. You see at the very top of the screen many wires  
4 were to Corporate Trust Clearing, Metro Gem, PAC Funding,  
5 Petters Limited, et cetera. So this is the analyst  
6 recording some of the more prominent recipients of wires out  
7 of the PCI account.

8 The next paragraph down, it's the incoming credits  
9 that are being summarized or captured, as well as references  
10 to this Euro Sweep feature.

11 So there are credits and debits occurring in the  
12 account on, I think, a daily basis as funds are swept out of  
13 the account and back into the account as the new business  
14 day begins.

15 MR. SCHAPER: Mr. Herzka, could you please focus  
16 on the wires that have a 9:54 -- sorry, the entries, the  
17 comments that have a 9:54 timestamp on them.

18 BY MR. SCHAPER:

19 Q. So on the bottom comment here, is there an indication of  
20 where wires were received from?

21 A. Yes, sir. There's a specific mention of Enchanted,  
22 Nationwide, PAC Funding, Palm Beach, Metro Gem, Thousand  
23 Lakes.

24 Q. And, Mr. Grice, in your work on this case and after  
25 watching or reading testimony in the trial, did you see any

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1 evidence that AML analysts had information about Nationwide  
2 and Enchanted's supposed relationship to PCI?

3 MR. ANTHONY: Objection, foundation as to what was  
4 in the mind of employees.

5 THE COURT: Overruled.

6 THE WITNESS: There are no documents about --  
7 there are no documents other than references to the frequent  
8 transaction relationship with Nationwide and Enchanted.

9 So there are many references -- I haven't tried to  
10 calculate. If not every alert, it's most alerts  
11 specifically mention Nationwide and Enchanted, but there's  
12 not, nor should there have been, any understanding or  
13 explanation for what Nationwide and Enchanted were engaging  
14 in. That's not the requirement that was in place at the  
15 time, according to the fed or to industry custom and  
16 practice.

17 BY MR. SCHAPER:

18 Q. And you were here for Ms. Ghiglieri's testimony?

19 A. I was.

20 Q. Did she identify any evidence from before September 2008  
21 that the AML analysts had information that Nationwide and  
22 Enchanted were supposed to be wholesalers?

23 A. No.

24 Q. Did you see any evidence that became available after  
25 September 2008 about what Nationwide and Enchanted actually

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1 were?

2 A. I was here for Mr. Martens' testimony. Yes. I was here  
3 for Mr. Martens' testimony.

4 Q. And what did it turn out that Nationwide and Enchanted  
5 were?

6 A. Because of the PwC report, the world came to -- we all  
7 learned, I learned that these were sham vendors.

8 Q. And how, if at all, does the fact that this evidence was  
9 available after September 2008 relate to your opinions in  
10 this case?

11 A. This is that hindsight bias issue I was describing  
12 earlier, where, thanks to Mr. Martens' many thousands of  
13 hours of analysis, I can now understand -- I now know what  
14 questions to ask that I did not know to ask if I were in the  
15 bank on June 6th of 2006.

16 Q. Did you see any evidence that the AML analysts had  
17 information that PCI's account should be receiving incoming  
18 funds directly from retailers?

19 A. No.

20 Q. Were the analysts supposed to seek out that information  
21 in order to properly close the alert under custom and  
22 practice in the banking industry?

23 A. Not in my view at all.

24 MR. SCHAPER: If we can turn back to page 37,  
25 Mr. Herzka, and look at the row that's stamped 9:53.

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1 Actually, I am sorry, we can skip that. Mr. Herzka, if you  
2 would go to page 39 instead and look at the last box of  
3 text, 9:56, there.

4 BY MR. SCHAPER:

5 Q. Based on your review of this document, Mr. Grice, did  
6 the analyst identify how the value and volume of the wires  
7 compared to PCI's prior activity?

8 A. Can you repeat the question, please?

9 Q. Did the analyst here make a comparison of the alert --  
10 the alerted activity to the customer's prior activity?

11 A. Yeah. They're -- yes. They're saying that it's  
12 consistent with that prior transactional activity, which is  
13 consistent with fed guidance and industry custom and  
14 practice at the time.

15 Q. So looking at this alert history as a whole, Mr. Grice,  
16 in your view, do the comments appear too short or not  
17 detailed enough according to industry standard and practice  
18 and regulatory expectations at the time?

19 A. I recognize -- what we're looking at is a business  
20 record, and this is a conclusion stated by the AML analyst.  
21 And I read this as somebody who supervised AML analysts  
22 doing similar kinds of work. They're stating their  
23 conclusion. They describe some of the analysis they  
24 performed, but it's primarily a way to convey at a high  
25 level their analysis and their conclusion.

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1           So I read this as really part of a conversation  
2       between, in this case, Ms. Pesch and her supervisor. This  
3       is -- it's like a memo being sent from the AML analyst  
4       literally to the supervisor, saying this is my conclusion.  
5       And so if you have any questions, come down to the hall and  
6       talk to me.

7       Q. Was the level of detail that Ms. Pesch provided here,  
8       was that consistent with custom and practice in the banking  
9       industry at the time?

10      A. Yes. And I guess I need to be clear. There's no  
11      regulation, law, guidance about how much of an internal memo  
12      needs to be created, if any, supporting my conclusion. I  
13      want Mary Pesch to do her best analysis. I'm using her  
14      conclusion. That's what drives the decision-making inside  
15      the bank with respect to suspicious activity. So this is a  
16      statement of the conclusion, and this is consistent with fed  
17      guidance and with industry custom and practice at the time.

18      Q. Can you say -- just based on this document, can you say  
19      with specificity exactly what all of the incoming and  
20      outgoing funds wired through the account would be used for?

21      A. No, nor should I at the time. So this is where  
22      Ms. Ghiglieri and I have the greatest disagreement. There's  
23      been lots of discussion about KYC, "know your customer."  
24      This is an ancient concept. I described it earlier as  
25      somewhat vague until 9/11 when we had this CIP requirement

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1 for very specific elements of KYC. Later those expectations  
2 change --

3 MR. ANTHONY: Objection, narrative response.

4 THE COURT: Sustained.

5 BY MR. SCHAPER:

6 Q. Mr. Grice, in terms of the KYC guidance from regulators  
7 and the custom and practice, did that change over time?

8 A. It did, but it never became KYCC, right? It never --

9 Q. What is KYCC?

10 A. So "know your customer." And if we were to force banks  
11 to go even deeper into the nature of Nationwide or the  
12 nature of Enchanted or the nature of Metro Gem --

13 MR. ANTHONY: Objection, narrative answer again.

14 THE COURT: Sustained.

15 BY MR. SCHAPER:

16 Q. First of all, what is KYCC that you just referred to?

17 A. "Know your customer's customer," which is a concept.  
18 It's not a requirement.

19 Q. Was "know your customer's customer" industry standard  
20 and practice in the banking industry between 2002 and 2008?

21 A. Not at all.

22 Q. Is "know your customer's customer" what you believe  
23 Mr. Ghiglieri is opining should have been the standard?

24 A. That's what I heard. That's how I interpreted her  
25 description of -- actually, that's how I understood her

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1 criticism of M&I's conduct.

2 Q. And do you agree with that criticism?

3 A. No.

4 MR. SCHAPER: And lastly on this alert, if we  
5 could look at the last two rows on page 38 and the first  
6 three rows on page 39, Mr. Herzka.

7 BY MR. SCHAPER:

8 Q. Based on just the information --

9 MR. SCHAPER: Mr. Herzka, I think that's 37 and  
10 38. If we could please look at 38 and 39, the end of 38 and  
11 the beginning of 39. And if you could scroll up on that  
12 part of 38, please, and then scroll down on 39, actually.

13 BY MR. SCHAPER:

14 Q. Is there an indication that the analyst looked into  
15 different types of transactional activity for this alert?

16 A. Yes. They're compiling. This is a reflection of our  
17 customer, the bank's customer's activity, so who the wires  
18 are to and wires are from, and then some discussion of  
19 debits and credits, the Euro Sweep account and the check  
20 activity. So it is a comprehensive review of the account  
21 activity for this time frame and it's being reflected here.

22 Q. You just mentioned checks. So is there a reference to  
23 checks in the second to last row on here?

24 A. Yes, sir. So, again, the alert was for wires, but  
25 Ms. Pesch is also addressing the information available.

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1 First of all, she is telling me that there were checks also  
2 during the time period, and she's pulling in some of that  
3 information to help inform the reader of this alert about  
4 what's understood.

5 Q. Do checks contain information about the purpose of the  
6 transaction sometimes?

7 A. Generally in that memo field.

8 Q. Is that reflected on this alert?

9 A. Yes. The reference to "Disney on Ice" is from somebody  
10 writing into the memo field what the check is for.

11 Q. Do wires -- wire transfers typically contain that same  
12 information?

13 A. Generally not, although I do recall the bank adopted a  
14 policy -- I can't place the year. The bank adopted a policy  
15 for customers who are not regular wire remitters, that  
16 outbound wires should include a purpose. But if you are a  
17 regular wire remitter, if you are doing wires frequently,  
18 you don't have to gather this information. So it's subject  
19 to the preferences of the bank, but there's no requirement  
20 that anybody gather or report the purpose of a wire.

21 Q. Was PCI a regular wire remitter?

22 A. Yes.

23 Q. So did it have to include any information about purpose?

24 A. None was required.

25 Q. So this alert was reviewed by Mary Pesch; is that right?



Grice - Direct

1 A. Yes, sir.

2 Q. And did you watch her testimony that involved the  
3 discussion of her performance reviews at M&I Bank?

4 A. I did.

5 Q. And how would you describe her reviews?

6 A. Very positive.

7 Q. Based on your review of records that Ms. Pesch looked at  
8 and alerts that she dealt with, does that surprise you?

9 A. Not at all.

10 Q. Why is that?

11 A. Again, I was impressed by the -- well, the HR reviews  
12 showed that she was recognized for the quality of her work  
13 and the detail and kind of the craftsmanship, and I see that  
14 reflected here given the expectations of the fed and the  
15 industry custom and practice at the time.

16 Q. Let's just look at one more of these alerts, Mr. Grice.

17 MR. SCHAPER: If we could go to page 80,  
18 Mr. Herzka, and look at the top.

19 BY MR. SCHAPER:

20 Q. This is an alert in the month of July 2007. Do you see  
21 that?

22 A. Yes, sir.

23 Q. And if we look at the alert history part of this  
24 document, was this reviewed by Sara Johnson?

25 A. Yes, sir.

Grice - Direct

1 Q. So looking at the row that has a timestamp of 10:45 on  
2 this page at the bottom, do you see a reference to something  
3 called QAPOR?

4 A. I do, toward the bottom of that --

5 Q. Are you familiar with what QAPOR is?

6 A. Yes. Qualified account for peer-only review.

7 Q. And just at a high level, can you explain what that is.

8 A. It was a process added to the AML alert work stream that  
9 allowed for a focused analysis of transactions that were  
10 only alerting against peer activity or peer volume.

11 Q. When was this implemented at M&I?

12 A. In late 2006.

13 Q. Were customers added to this QAPOR list?

14 A. There was a process for adding customers to this list.  
15 I think Bernita Hile was in charge of overseeing that  
16 process.

17 Q. Was it common for banks at the time to have some sort of  
18 process like this?

19 A. Yeah, because it was -- I mean, it's a kind of false  
20 positive, right? The system is running and it's  
21 frequently -- in the case of PCI, it's almost monthly  
22 generating an alert for that same customer for exactly the  
23 same reason.

24 So it's -- I use this word "artifact," right?

25 It's a feature of the fact that PCI's primarily using wires

Grice - Direct

1 and using domestic wires. They keep hitting on this rule of  
2 their wires are big and there are more of them. And at some  
3 point our understanding doesn't change. They keep having  
4 the same attribute each month.

5 Q. So if -- was PCI on the QAPOR list?

6 A. It was added to the list I think in December of '06.

7 Q. Even when it was on that list, if there was an alert on  
8 PCI account activity, did that still get reviewed by an AML  
9 analyst?

10 A. Yes.

11 Q. And was M&I's decision to put PCI on the QAPOR list  
12 consistent with the risk-based approach to AML issues that  
13 you discussed earlier?

14 A. In my view, it's entirely consistent with this idea of  
15 going to the -- modifying the process to focus on the most  
16 likely to be suspicious cases. And these are -- because of  
17 the frequency of the alerts and the unchanging nature of  
18 PCI's conduct or the customer conduct, it's perfectly  
19 reasonable and consistent with fed guidance.

20 MR. SCHAPER: Mr. Herzka, if you could just go  
21 back to the main document.

22 BY MR. SCHAPER:

23 Q. Mr. Grice, the comments in this alert --

24 MR. SCHAPER: And if you could put up the second  
25 page of that document too, Mr. Herzka.

BY MR. SCHAPER:

Q. The comments in this alert seem to be a bit shorter than in the last alert we looked at. Does that concern you?

A. Not at all.

Q. Why not?

A. Well, this is that issue you asked earlier about history. This is additive. So this is part of "know your customer."

So let's imagine a situation where I did a review of you two years ago and then a year and a half ago and a year ago. I need to incorporate that history because that history is part of my knowledge of you. And so adding on to my knowledge of you doesn't require that I repeat everything I've ever done about you, right?

So my knowledge is additive. I know more about you this month than I knew last month, but I don't have to repeat or recite again or redo that analysis. My prior knowledge is true and now I'm supplementing it with an extra month of insight.

Q. Well, just because you know a customer's account history, does that mean that the bank would not in any circumstance find that its activity was suspicious?

A. No.

MR. ANTHONY: Objection, leading.

THE COURT: Overruled.

Grice - Direct

1 THE WITNESS: What matters here is if the customer  
2 is doing what PCI did, which is maintain its approach to  
3 transactions and maintains the style of transactions, as  
4 long as they continue maintaining that style of  
5 transactions, the fed tells banks you know the customer  
6 because the nature of the transactions is unchanging, so  
7 that customer has not changed.

8 Now, if you were to change the facts and if  
9 Petters -- Mr. Petters is suddenly sending wires to China or  
10 receiving cash -- doing a cash for wire swap, that's a  
11 different situation. But Mr. Petters' transaction activity  
12 never changed. It stayed constant with this predominantly  
13 wire -- domestic wire focus throughout the period.

14 BY MR. SCHAPER:

15 Q. So going back to the fact that this -- the descriptions  
16 on this alert are so much shorter than what we looked at  
17 previously, in an ideal world, Mr. Grice, would you have  
18 liked to see even more documentation than this?

19 A. Absolutely, but that's a reflection of me being curious  
20 or a nerd. I want to understand more.

21 And we are looking at this from 15 or 20 years  
22 later than the transaction history. In real time we're all  
23 limited by what we see and know. So this is perfectly  
24 sufficient to satisfy both fed expectations and industry  
25 custom and practice, but in these retrospective projects,

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1 like the one we're engaged in here, of course I would like  
2 to know more because we now have the certain knowledge of  
3 what happens later. Nobody had that in 2007 when this  
4 review was being done.

5 Q. When you say you have a certain knowledge of what  
6 happened later, what are you referring to?

7 A. I am referring to the Martens report and the FBI raid  
8 and the criminal trial, et cetera.

9 Q. Do you recall Ms. Ghiglieri criticizing the fact that  
10 M&I had only one peer group for business customers?

11 A. I do.

12 Q. Did M&I having only one peer group make it more or less  
13 likely that PCI's account would alert in Searchspace?

14 A. It caused it to alert more frequently.

15 Q. So did the fact that there was only one peer group  
16 result in more or less frequent reviews of PCI's account  
17 activity?

18 A. Even more frequent alerts. I think we -- I can't recall  
19 who the witness was, but yesterday I believe there was a  
20 diagram showing total monthly volume of PCI's wires and at  
21 the bottom was a very small line reflecting what the  
22 business account average was at the time. It's a small  
23 percentage.

24 So PCI was clearly doing much more volume and  
25 number of wires than the typical business customer, but it's

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1 because of that broad sample, we're comparing PCI to all  
2 business customers, that causes them to alert even more  
3 frequently. If we were to put them into a small community  
4 of just financial clients or hedge funds or trading  
5 companies, they would alert less frequently.

6 So I don't understand Ms. Ghiglieri's objective or  
7 her criticism about the peer group.

8 Q. Okay. Thanks.

9 MR. SCHAPER: We can take that down, Mr. Herzka.

10 BY MR. SCHAPER:

11 Q. Did the fact that M&I only had one peer group result in  
12 PCI's account being reviewed more frequently?

13 A. Yes, it was reviewed more frequently because of the  
14 single peer population being all business customers of the  
15 bank.

16 Q. I would like to talk a little bit more specifically,  
17 Mr. Grice, about what information, based on your review, M&I  
18 had about PCI's activity in the 9018 account. Did you  
19 prepare a few demonstrative slides on that issue?

20 A. I did, yes, sir.

21 Q. Okay.

22 MR. SCHAPER: So if we could pull up slide 14 of  
23 DD-60.

24 BY MR. SCHAPER:

25 Q. So what information was available to M&I in terms of the

Grice - Direct

1 transactions --

2 MR. SCHAPER: If we could take that down. Thank  
3 you.

4 BY MR. SCHAPER:

5 Q. In terms of the transactions in the PCI account, what  
6 information was available to M&I?

7 A. With this diagram I'm trying to convey the view of  
8 the bank, what the bank can see about its customer, so,  
9 you know, what does "know your customer" look like, in a  
10 sense.

11 So my customer, if I am the bank, is PCI, the 9018  
12 account. I can see their account activity through the  
13 various computer systems and software, and I see wires  
14 coming in and going out. I see wires to and from Petters  
15 Limited and to and from -- I'm sorry, from Enchanted in this  
16 instance. Each of those other accounts is at other banks.

17 So those other banks have a "know your customer"  
18 obligation on their customers, which would be Petters  
19 Limited and Enchanted. Those aren't our customers. Those  
20 are their customers.

21 So the only thing my bank can see is the account  
22 activity in and out of my customer's account.

23 Q. And so, based on your review, did M&I have insight into  
24 transactions that occurred outside the gray area on this  
25 slide?



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1 A. They couldn't see it. It's outside their scope of view.

2 Q. Okay. So could the information that M&I was seeing be  
3 consistent with how funds would flow as part of a legitimate  
4 business?

5 A. Can you ask that again, please?

6 Q. Could the information that M&I had a view into be  
7 consistent with how the flow of funds worked for a  
8 legitimate business?

9 A. Certainly.

10 Q. And did you prepare something that explains that?

11 A. Yes. So I --

12 MR. SCHAPER: If you could go to the next slide,  
13 Mr. Herzka.

14 THE WITNESS: This is an attempt at trying to  
15 demonstrate what could be occurring outside my field of  
16 vision.

17 MR. ANTHONY: Objection, lack of foundation as to  
18 any payments from a big-box retailer to Enchanted Family  
19 Buying. This demonstrative is not supported by any facts in  
20 the record.

21 MR. SCHAPER: Your Honor ruled on this one this  
22 morning, and I also object to the speaking objection.

23 THE COURT: Pardon me?

24 MR. SCHAPER: Your Honor ruled on this this  
25 morning, and I also object to the speaking objection.

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1 MR. ANTHONY: We're renewing our objection,  
2 Your Honor, for the reasons stated. There's no facts to  
3 support the demonstrative.

4 THE COURT: Overruled.

5 BY MR. SCHAPER:

6 Q. Sorry, Mr. Grice. Could you explain what you were just  
7 speaking about in terms of what's on this slide.

8 A. So if I were the bank at the time and I were trying to  
9 understand the things that I couldn't see, if I were trying  
10 to fill in --

11 MR. ANTHONY: Further objection, Your Honor. He  
12 is putting himself into the mind of the bank, which has been  
13 off limits throughout this entire case, trying to talk about  
14 what's in the bank's mind.

15 THE COURT: Sustained.

16 BY MR. SCHAPER:

17 Q. If you could just explain what you were putting on this  
18 slide, Mr. Grice.

19 A. I tried to describe a potential flow of funds that would  
20 account for or relate to big-box retailers, electronics  
21 manufacturers, and investors.

22 MR. ANTHONY: Same objection, lacks foundation.

23 THE COURT: Overruled.

24 BY MR. SCHAPER:

25 Q. Was the portion of this transaction that was visible to

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1 M&I, based on the record you reviewed, sufficient for M&I to  
2 be able to distinguish PCI's fraudulent activities from a  
3 legitimate business?

4 MR. ANTHONY: Objection, calls for state of mind  
5 of the bank.

6 THE COURT: Overruled.

7 THE WITNESS: No, sir.

8 BY MR. SCHAPER:

9 Q. And do we know now what the transaction activity  
10 actually looked like?

11 A. We do, thanks to a lot of hard work and, again, the FBI  
12 raid, the criminal trial, et cetera.

13 Q. And do you have a slide that looks at that?

14 A. Yes, sir.

15 MR. SCHAPER: Can we go to the next slide.

16 BY MR. SCHAPER:

17 Q. And what are you communicating on this slide, which is  
18 titled "Fraudulent Transactions Throughout" -- or "Through  
19 the PCI Account"?

20 A. This is what I learned by reading the Martens report,  
21 Exhibit 42. So this is the some of the truth of the matter.  
22 This is some of the truth of the --

23 MR. ANTHONY: Objection to narrative response.

24 THE COURT: Sustained.

25 BY MR. SCHAPER:

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1 Q. So, first of all, when you say "reading the Martens  
2 report," what are you referring to?

3 A. I'm referring to the PwC report authored by Mr. Martens  
4 that he testified to last week.

5 Q. So when you say "Mr. Martens," you are talking about one  
6 of the plaintiff's experts?

7 A. Yes, sir.

8 Q. And what did you learn from reading that report as it  
9 relates to this slide?

10 A. Well, I mean, in the first instance we learn that both  
11 Petters Limited and Enchanted are kind of fictitious or sham  
12 operations. So Enchanted is a sham vendor, I learned by  
13 reading the Martens report.

14 And then sort of the second cut is I then got to  
15 understand the flow of funds between Petters Limited and  
16 investors and between Enchanted and additional investors,  
17 SPEs.

18 Q. Is this demonstrative, Mr. Grice, is this a simplified  
19 version of the actual Ponzi scheme or is this intended to  
20 represent what the actual scheme looked like?

21 A. It's a simplified version because the actual -- again,  
22 my understanding is the actual version is even more complex.  
23 So this is an attempt to make it intelligible.

24 Q. Did M&I have access to this analysis, as far as you  
25 could tell from the record, before the Ponzi scheme was

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1 uncovered in 2008?

2 A. No.

3 MR. ANTHONY: Objection, lacks foundation. He  
4 said it wasn't created until after 2008.

5 THE COURT: Sustained.

6 BY MR. SCHAPER:

7 Q. When -- you said this was based on Mr. Martens' work?

8 A. Yes, sir.

9 Q. And can you just remind us when that was done, when that  
10 work was done.

11 A. Again, there were multiple iterations. I think 2010 was  
12 the first, but I could be off. But it was thousands of  
13 hours of professional time to compile this information. It  
14 was complex.

15 MR. ANTHONY: Objection, move to strike the last  
16 portion as a narrative again.

17 THE COURT: Overruled.

18 BY MR. SCHAPER:

19 Q. At the time that Ms. Ghiglieri wrote her expert reports  
20 in 2018, did she have access to this kind of information  
21 from the PwC report?

22 A. Of course.

23 MR. SCHAPER: Okay. We can take that down,  
24 Mr. Herzka.

25 BY MR. SCHAPER:

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1 Q. Do you recall that Ms. Ghiglieri testified about what  
2 she viewed as a number of red flags of suspicious activity  
3 that M&I ignored?

4 A. I do.

5 Q. Before we get into those details, do you have a view on  
6 whether the presence of a red flag itself is proof of  
7 suspicious activity?

8 A. Yeah, this is important. A red flag is not in any way a  
9 conclusion. It's really a basis for asking other questions.

10 Q. You've talked a little bit about regulators in the  
11 industry. Do regulators tell banks that the mere presence  
12 of a red flag necessarily means it's criminal activity?

13 A. No. They make it quite clear that a red flag is nothing  
14 more than an indicator and may be the basis for asking more  
15 questions. It's not a conclusion of criminal activity.

16 MR. SCHAPER: So if we could put up DD-60,  
17 slide 17, Mr. Herzka.

18 BY MR. SCHAPER:

19 Q. What is this that we're looking at, Mr. Grice?

20 A. So this is a sentence in the second paragraph of what's  
21 labeled -- if you can read behind the quote, it's Appendix F  
22 of that section of the BSA/AML Exam Manual from the FFIEC.

23 And I read this as a warning. "The following  
24 examples" -- which this is a seven- or eight-page appendix  
25 of red flags. "The following examples are red flags that,

1       when encountered, may warrant additional scrutiny. The mere  
2       presence of a red flag is not by itself evidence of criminal  
3       activity."

4               So it is advising bankers like me to slow down,  
5       don't reach a conclusion. At best, this may be a way to  
6       frame the next question.

7       Q. So Ms. Ghiglieri testified --

8               MR. SCHAPER: And we can take that down. Thank  
9       you.

10       BY MR. SCHAPER:

11       Q. Ms. Ghiglieri testified that the bank should have seen  
12       PCI's activity as a red flag of suspicious activity and  
13       reported it as suspicious and considered closing the  
14       account. Do you recall that testimony?

15       A. I do.

16       Q. Do you agree with that?

17       A. Not at all.

18       Q. Have the federal regulators -- or did the federal  
19       regulators at the time, between 2002 and 2008, give guidance  
20       to the banking community about the amount of SARs being  
21       filed?

22       A. Yes.

23       Q. What guidance did they give in that regard?

24       A. They told the banks to slow down and do your work. So  
25       the instruction was do not engage in what Ms. Ghiglieri is

1       advocating, which is reactive filing or what was called  
2       preemptive filing.

3               The bank has a job to do. The bank has access to  
4       information. Look at the information, assess it based on  
5       your knowledge of the customer, you, the bank's knowledge of  
6       the customer, investigate it. And then if you believe it's  
7       suspicious, file it, but only upon determination that it's  
8       suspicious do you file it.

9               This practice of preemptive filing was clogging  
10       the system with kind of half-baked allegations of suspicion.

11       Q. And was there indications from the regulators that that  
12       was a problem?

13       A. They warned us in no uncertain language do not engage in  
14       this preemptive filing process because we don't want false  
15       positives based on basically shoddy work. We want  
16       high-quality SARs that we can take and use for law  
17       enforcement purposes. Don't just give us all your red  
18       flags, which I think is what Ms. Ghiglieri was advocating.

19       Q. Were there banks that actually got in trouble from  
20       regulators for filing too many SARs?

21               MR. ANTHONY: Objection, lacks foundation, beyond  
22       the scope of his report.

23               THE COURT: Sustained.

24       BY MR. SCHAPER:

25       Q. So what is the appropriate standard for the decision to



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1 report suspicious activity?

2 A. Again, the bank is required to go through a process of  
3 detection -- you know, monitoring, obviously, but then this  
4 detection of what is the thing that is potentially  
5 suspicious, investigation, and then thoughtful filing. So  
6 it's got to be based on looking at the available information  
7 and then coming to an independent determination with some  
8 knowledge that this is suspicious.

9 So we want to have banks play their role in giving  
10 useful referrals to law enforcement and not, again, kind of  
11 these preemptive or reactive referrals.

12 Q. Could there be filings of SARs where the bank has the  
13 knowledge that gives it reason to know that there may be  
14 suspicious activity?

15 MR. ANTHONY: Objection, speculative, foundation,  
16 not in his report and --

17 THE COURT: Would you stand up when speaking.

18 MR. ANTHONY: I'm sorry, Your Honor. Lacking  
19 foundation, speculative, an undisclosed opinion not in his  
20 report and unrelated to the facts of this case.

21 THE COURT: Sustained.

22 BY MR. SCHAPER:

23 Q. Did you hear testimony in this case where plaintiff's  
24 counsel asked Mr. Jambor numerous times about whether he  
25 personally had filed SARs?

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1 A. Yes.

2 Q. In your experience with banks like M&I, do individual  
3 bankers typically file SARs?

4 A. Not in my experience.

5 Q. Is there a process that banks, like M&I, go through  
6 before making a filing of a SAR?

7 A. Yes. We've been discussing part of that, which is the  
8 AML analysts and the role they play and the AML Committee,  
9 the SAR Committee. It's to be thoughtful, perform an  
10 investigation, compile the relevant facts, and then share  
11 that information with law enforcement.

12 Q. Based on your expertise, do you know whether a bank  
13 employee is permitted to disclose whether a SAR was filed on  
14 a particular customer?

15 A. I know their -- well, this applies to employees,  
16 consultants like me. You are never allowed, ever, for the  
17 rest of your days to disclose the filing of a SAR.

18 Q. Why not?

19 A. We talked earlier about the clock, the 30-day or 60-day  
20 clock, for the bank to make the filing once it has  
21 determined something is suspicious. That time pressure  
22 means that in many instances I, a bank, may be filing a SAR  
23 based on very early information. I may be wrong. So if I  
24 assert that Mr. Schaper is engaging in a financial crime,  
25 that has to be super confidential because the probability of

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1 error is quite high.

2 So to protect your rights, I am precluded forever,  
3 both as an institution and as a person, from ever disclosing  
4 this. Even if I leave the bank and were vacationing in  
5 Hawaii and we bump into each other, I can never talk to you  
6 about what was done back in my days at Bank X.

7 Q. There's been some testimony about closing bank accounts  
8 in this case. Did M&I have a policy on when to close a  
9 customer account?

10 A. It did. It was adopted sometime during the relevant  
11 time here. I can't place the precise time, but there was a  
12 policy in place.

13 Q. And was there a reason, in your review of the record,  
14 that that policy was adopted?

15 A. I don't know what informed that. I believe it was  
16 pressure from the fed. I see the bank disclosing to the fed  
17 the names of customers whose accounts were closed because of  
18 a SAR in, I think it was, 2005. So this was adopted at the  
19 early end of the time frame. So I know they did it. I just  
20 don't know the background to why they did it.

21 Q. After that policy was adopted, did you see any criticism  
22 by the fed of that policy at M&I Bank?

23 A. No.

24 Q. Are you familiar -- and you talked about it a bit --  
25 with the list of red flags contained in the FFIEC manual?

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1 A. Yes, sir.

2 Q. And based on your review of materials in this case, do  
3 you believe that M&I employees ignored red flags that were  
4 indicative of suspicious activity?

5 A. No.

6 Q. Why not, at a high level?

7 A. I think they were doing -- if we think back to that  
8 three-part triangle of --

9 MR. ANTHONY: Object, narrative and also entering  
10 into the mind of the employees.

11 MR. SCHAPER: I'm just asking for his opinion,  
12 Your Honor.

13 MR. ANTHONY: But it depends on what he thinks is  
14 in the mind of the employees.

15 THE COURT: Sustained.

16 BY MR. SCHAPER:

17 Q. Let's talk about some of the specific red flags  
18 Ms. Ghiglieri mentioned.

19 Do you recall her testimony that the flow of funds  
20 through the PCI account should have alerted M&I that there  
21 were suspicious activity?

22 A. I do.

23 Q. Based on your review, was the way the transactions  
24 flowed through the PCI account a red flag?

25 A. Not based on the information that existed at the time.

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1 Q. Why not?

2 A. Because there was no knowledge about sham vendors, for  
3 example. There was no information about sham vendors.

4 Q. Based on your review, did you see evidence that M&I had  
5 information that there would be direct retailer payments  
6 into the PCI account?

7 A. No.

8 Q. Do you recall Ms. Ghiglieri's testimony that the value  
9 and volume of funds flowing in and out of the account of PCI  
10 constituting a red flag of suspicious activity?

11 A. I do.

12 Q. And based on your review, what's your opinion on that?

13 A. I think it's without basis.

14 Q. Were the transactions and the entities involved in the  
15 PCI account generally similar over time?

16 A. Yes. They were very consistent.

17 Q. Have you prepared a slide showing the volume of wires in  
18 and out of the account over time?

19 A. Yes, sir.

20 MR. SCHAPER: Mr. Herzka, if you would please put  
21 up slide 18 of DD-60.

22 BY MR. SCHAPER:

23 Q. This is titled "PCI's Inflows Over Time." Could you  
24 just briefly describe this, Mr. Grice.

25 A. So this is the number -- these are aqua bars? I am may

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1 be color-blind. The greenish-aqua flavor is the monthly  
2 number of inbound wires, and then the red jagged line is a  
3 three-month rolling average just to help explain the data  
4 more accurately.

5 Q. And what does this graphic demonstrate about the inflows  
6 in the account?

7 A. It was very regular. And, again, as a banker, I would  
8 call this kind of well behaved. It's a growing -- it looks  
9 like a growing business, right? It's a growing volume of  
10 inbound activity.

11 Q. Do you have a recollection, Mr. Grice, about whether the  
12 economy generally was growing between 2002 and 2007?

13 A. It followed the shape of this curve. So things turned  
14 down in 2007.

15 Q. And if we look at the next slide, this says, "PCI's  
16 Outflows Over Time." What information is contained here?

17 A. Again, this is just the opposite direction. So we're  
18 now counting the number of outbound wires in the 9018  
19 account.

20 Q. So do you agree with Ms. Ghiglieri's first red flag that  
21 the transactions were inconsistent with PCI's purported  
22 business model?

23 A. No, sir.

24 Q. If we look at the second red flag that Ms. Ghiglieri  
25 talked about, do you recall that she suggested that PCI's

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1 doing business with a money launderer was a red flag of  
2 suspicious activity?

3 A. I do.

4 Q. Do you recall that that individual, Mr. Vennes, had some  
5 affiliation with Metro Gem?

6 A. Yes, sir.

7 Q. And do you recall that Metro Gem was a party that would  
8 transact from time to time with PCI?

9 A. Yes. Metro Gem was not a customer of M&I. It was a  
10 customer of the customer of M&I. So it was a counterparty  
11 to the PCI transactions.

12 Q. So according to the regulatory guidance and custom and  
13 practice at the time, what were analysts required to do, if  
14 anything, regarding research into the counterparties in a  
15 customer's account transactions?

16 A. If the account had been identified as high risk, if the  
17 bank had filed SARs, for example, because they thought  
18 something was improper about the account -- I recognize  
19 banks doing additional investigation into counterparties,  
20 but that's not the fact here. We did not have -- we did  
21 not -- the bank did not see the PCI account as high risk and  
22 there was no obviously suspicious conduct on the face of it.

23 Q. Did you hear Ms. Ghiglieri testify that M&I analysts  
24 should have known Metro Gem was involved with a convicted  
25 felon?

Grice - Direct

1 A. Yes.

2 Q. Are you familiar with the MIcontract report from 2002  
3 regarding Metro Gem as a prospective customer of M&I?

4 A. It was never a customer. It was a prospective customer.  
5 Yes, sir.

6 Q. So if a customer like PCI has a counterparty like Metro  
7 Gem, were AML analysts required to look at MIcontracts  
8 reports for those counterparties?

9 A. No.

10 Q. Were AML analysts expected to do so under industry  
11 custom and practice in the banking field?

12 A. No.

13 Q. Did you see any evidence in the case, Mr. Grice, that  
14 the AML analysts in the 2005 to 2008 time period looked at  
15 2002 MIcontract reports for Metro Gem when they were  
16 reviewing PCI's account?

17 A. No. Marketing calls are not information about my  
18 customer. These are just that, marketing calls.

19 Q. Did you see any evidence in this case that AML analysts  
20 looked at information about Frank Vennes being a convicted  
21 felon?

22 A. No.

23 Q. While we're talking about Metro Gem, do you recall that  
24 Ms. Ghiglieri said that the AML analysts at the bank should  
25 have identified that wire transfers to Metro Gem were



Grice - Direct

1 inconsistent with Metro Gem being in the factoring business?

2 A. Yes, sir.

3 Q. Do you recall that testimony?

4 A. I do.

5 Q. Do you agree with that?

6 A. No.

7 Q. Why not?

8 A. It's putting an unreasonable burden on the AML analysts.  
9 First of all, this is not about "know your customer." This  
10 is this "know your customer's customer" question.

11 Q. What, in your view, would Ms. Ghiglieri's criticism have  
12 required AML analysts to do?

13 A. So they're stepping outside KYC. They're now choosing  
14 to go into this world of our customer's customer and doing  
15 an investigation, which is, I would argue, outside the scope  
16 and responsibility of a bank at the time.

17 And then would require the AML analyst to do a  
18 kind of business analysis of the customer's customer and  
19 reach sufficient understanding of factoring to be able to  
20 know factoring or whether it's not factoring, which is a  
21 very complex question.

22 Q. So you regularly interacted with banking regulators in  
23 the 2002 to 2008 time frame, correct?

24 A. Yes, sir.

25 Q. Did you ever hear regulators suggest that a bank should

Grice - Direct

1 do what Ms. Ghiglieri is suggesting with respect to M&I's  
2 looking into Metro Gem?

3 A. Never.

4 Q. So do you agree with Ms. Ghiglieri's suggested red flag  
5 of suspicious activity about PCI doing business with a money  
6 launderer?

7 A. No.

8 Q. The next red flag on Ms. Ghiglieri's list was large  
9 round dollar wire transfers to and from the same parties for  
10 similar amounts on a monthly basis. Do you recall her  
11 testimony that that would have been an indication of  
12 suspicious activity?

13 A. I do.

14 Q. Let's first talk about round-trip transactions. She  
15 referred to transactions going through PCI as round-trip.  
16 Do you recall that testimony?

17 A. I do, yes, sir.

18 Q. And based on your review, do you agree with her that  
19 these were round-trip transactions?

20 A. No. There were very few where the actual dollars tie  
21 out or match on a transaction basis.

22 Q. Are similar dollar amounts the same thing as a  
23 round-trip transaction?

24 A. No.

25 Q. Let's talk about round dollar transactions. Do you know

1 where the concept of round dollar transactions came from in  
2 terms of being a regulatory concern?

3 A. I do. So before 9/11 I did a research project into the  
4 history of some of the red flags that were available in the  
5 industry at the time, and I went to the policy office of the  
6 Federal Reserve Board in Washington and talked to the team  
7 that was identifying red flags. And there was a gentleman  
8 who pulled me aside. We did a national conference in, I  
9 think, 1999.

10 MR. ANTHONY: Objection, narrative, hearsay.

11 THE COURT: Sustained.

12 BY MR. SCHAPER:

13 Q. If you could just state your understanding of how round  
14 dollar transactions became a regulatory concern in some  
15 context.

16 A. Of course. It was cash transactions, usually involving  
17 ATMs and personal accounts.

18 Q. Would that regulatory concern around round dollar  
19 transactions apply to the PCI account?

20 A. No.

21 Q. Even looking at PCI, did you analyze whether most of the  
22 PCI transactions were in large round dollars?

23 A. I did. My team and I did an analysis of the wire  
24 transactions to identify which ones were round to the  
25 hundred dollars or to the thousand dollars.

Grice - Direct

1 Q. And what did you find?

2 A. Certainly not the majority. I think 25 percent of the  
3 transactions were rounded to the hundred dollars and  
4 13 percent were rounded to the thousand dollars. So it's a  
5 minority of the transactions were large round dollar  
6 amounts.

7 Q. In your work on other cases, other litigation matters,  
8 have you ever said that round dollar transactions could be a  
9 red flag?

10 A. Certainly in instances where the customer is doing  
11 transactions through a personal checking account.

12 The one Ms. Ghiglieri mentioned, I did a report  
13 for a case involving a private wealth -- a private banking  
14 account where there was cash coming in and out in large  
15 round dollars at an ATM, in addition to other risk factors  
16 in the account.

17 So it's relevant to that -- my original  
18 understanding of large round dollars, that it's cash in and  
19 out of a retail account. It's not wires in and out of a  
20 business account.

21 Q. When you say "a retail account," do you mean an  
22 individual person's account?

23 A. An individual person's account. In this case it was a  
24 high net worth individual, but, still, it's a person's  
25 account as opposed to a business account.

Grice - Direct

1 Q. What was the name of that case?

2 A. I think it was *Stern vs. Wells Fargo*. I was retained by  
3 counsel for the Stern family.

4 Q. So was that an example of when you testified against the  
5 bank?

6 A. Yes.

7 Q. Were the facts of that case similar to the facts in this  
8 case?

9 A. No.

10 Q. And is the testimony that you are giving today about  
11 large round dollar transactions in line with your opinion  
12 that you gave in that case?

13 A. Yes.

14 THE COURT: Counsel, we will take our midday break  
15 at this point.

16 And so, Members of the Jury, please remember the  
17 instructions that you have been given and please continue to  
18 abide by those instructions.

19 We will have a longer break than normal and so I  
20 will ask you to be ready to return to the courtroom at 1:30.  
21 Okay?

22 (Jury excused)

23 **IN OPEN COURT**

24 **(JURY NOT PRESENT)**

25 THE COURT: And to our witness, I will ask you to

Grice - Direct

1 do the same.

2 THE WITNESS: Of course. Thank you.

3 THE COURT: We are in recess.

4 (Lunch recess taken at 11:46 a.m.)

5 \* \* \* \* \*

6 (1:32 p.m.)

7 **IN OPEN COURT**

8 **(JURY PRESENT)**

9 THE COURT: Good afternoon. Please be seated.

10 MR. SCHAPER: May I proceed, Your Honor?

11 THE COURT: Yes, you may. Good afternoon.

12 MR. SCHAPER: Thank you.

13 BY MR. SCHAPER:

14 Q. Mr. Grice, am I correct that before we broke for lunch  
15 that you went through your opinion that large round dollar  
16 amounts in and out of the account, round-trip transactions  
17 were not, in your opinion and based on your expertise, a red  
18 flag of suspicious activity?

19 A. Yes, sir.

20 Q. So in the 20 or 30 minutes, Mr. Grice, that I think I  
21 have left, I just want to cover a few more of the red flags  
22 that Ms. Ghiglieri testified about.

23 Do you recall her testimony that low beginning and  
24 ending balances in the PCI account were red flags of  
25 suspicious activity?

Grice - Direct

1 A. Yes, sir.

2 Q. And do you have a view of whether that, in fact, was a  
3 red flag of suspicious activity?

4 A. I think in this case it wasn't.

5 Q. And why is that?

6 A. I think it's consistent with careful banking by a  
7 customer. And I could imagine circumstances where it is  
8 reflective of suspicious activity, but not in a business  
9 account with some financial sophistication. The Petters  
10 scheme was well-concealed and sophisticated in its  
11 management. Using your cash efficiently would be consistent  
12 with that, that would be part of that.

13 Q. When you say "using your cash efficiently," what's your  
14 understanding of whether PCI earned interest on the 9018  
15 account?

16 A. They did not. So a large balance earned them nothing.

17 Q. Do you recall Ms. Ghiglieri's testimony that transfers  
18 of funds to Mr. Petters and other Petters employees -- or  
19 other PCI employees constituted a red flag of suspicious  
20 activity?

21 A. Yes, sir.

22 Q. And what is your view of that?

23 A. I also don't believe that is reflective of suspicious  
24 activity in this context at all.

25 Q. And why is that, Mr. Grice?

Grice - Direct

1 A. Tom Petters was the owner of the account. I don't see  
2 any controversy about that. He was the authorized signer.  
3 He properly granted signing authority to Deanna Coleman. So  
4 the transfers that Ms. Ghiglieri pointed to were properly  
5 signed, completed checks by legitimate authorized signers on  
6 the account.

7 So I -- the checks themselves were not improper or  
8 irregular or suspicious, and that was confirmed by Ed Jambor  
9 in the phone call he had with Tom Petters. I don't know the  
10 year of this, but it was in the early part of the 2002 to  
11 2008 time frame.

12 Q. Let me just stop you there. You are not saying that  
13 there -- you are not suggesting that the checks weren't  
14 actually written to Deanna Munson and Tom Petters from the  
15 account, are you?

16 A. I'm sorry. Say that again.

17 Q. There were actually checks and transfers to Ms. Coleman  
18 and Mr. Petters and Mr. White, correct?

19 A. Yes.

20 Q. So I guess the question: Is there anything unusual  
21 about checks or wires, even for significant amounts, being  
22 sent from a business checking account to employees of the  
23 company?

24 A. No. This is the right of the account owner and the  
25 authorized signer.



Grice - Direct

1 Q. Okay. And you mentioned Mr. Jambor a minute ago. Did  
2 you hear evidence that Mr. Jambor actually confirmed with  
3 the account owner that he was okay with Ms. Coleman or  
4 Ms. Munson sending checks to herself?

5 A. Yes.

6 MR. ANTHONY: Objection, mischaracterizes the  
7 testimony. PCI is the account owner.

8 THE COURT: Sustained.

9 MR. SCHAPER: Thank you.

10 BY MR. SCHAPER:

11 Q. Let me re-ask you that. Have you heard evidence that  
12 Mr. Jambor confirmed with Mr. Petters from PCI whether he  
13 was okay with Ms. Munson sending checks to herself?

14 A. Yes, I heard that testimony.

15 Q. Okay. Was it appropriate, under customary banking  
16 practices, for Mr. Jambor to call one of the signatories to  
17 the account to confirm that the checks were authorized?

18 A. It was entirely proper.

19 Q. Do you recall Ms. Ghiglieri's testimony, Mr. Grice, that  
20 PCI's refusal to provide M&I with requested financial  
21 statements constituted a red flag?

22 A. Yes.

23 Q. Okay. And based on your review of the record and your  
24 expertise, did that constitute a red flag of suspicious  
25 activity?

Grice - Direct

1 A. No.

2 Q. And why do you say that?

3 A. Customers have rights. There are obligations under the  
4 customer agreement in a depository relationship. Again,  
5 just to remind everyone, this was a simple checking account.  
6 It was not a loan.

7 So under the rules of a simple checking account,  
8 in my experience across my lifetime, commonly banks do not  
9 ask for or require anything other than evidence of my  
10 identity and proof of proper authorization to do a  
11 transaction.

12 So if the bank were to ask me for my tax return or  
13 a financial statement and all I had was a depository  
14 relationship, I am well within my rights to say no.

15 Q. Mr. Grice, did you hear testimony or see evidence in  
16 this case about Mr. Jambor receiving a request about whether  
17 there was \$39 million in the PCI account to fund the  
18 purchase of 100,000 cell phones?

19 A. I do, yes.

20 Q. Okay. And we have an exhibit that is already in  
21 evidence. It's P-60. And if you take a look at that --  
22 it's also in your binder, Mr. Grice. If we can -- and are  
23 you familiar with this document, Mr. Grice?

24 A. Just a second.

25 Q. Okay.

Grice - Direct

1 (Witness reviews document)

2 A. Yes, sir, I recall this.

3 Q. So if we look at the third page -- and do you recall  
4 Ms. Ghiglieri's view that this was signs of potentially  
5 fraudulent activity?

6 A. I do.

7 Q. And do you agree with that?

8 A. No.

9 Q. Let's look first at what we're seeing here. Would it be  
10 unusual for a customer like PCI, who was supposed to be in  
11 the electronics business, to get an inquiry about a  
12 transaction involving cell phones?

13 A. No. This looks perfectly consistent with the activity  
14 of somebody buying and reselling electronic goods, such as  
15 cell phones.

16 Q. Was this inquiry to -- that Mr. Jambor testified about,  
17 was this from somebody outside of PCI?

18 A. Yes. It was from a potential, I guess, vendor to PCI.

19 Q. And did Mr. Jambor, as far as you're aware in the  
20 record, actually respond to this person who inquired?

21 A. My understanding is he did not.

22 Q. And was that the appropriate thing to do under banking  
23 practice and customs?

24 A. Yes, because, again, PCI has a right to financial  
25 privacy. This would violate that right to financial

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1 privacy, by giving up information about account balances or  
2 account activity to somebody who is not the authorized  
3 signer or done with the expressed consent of the authorized  
4 signer.

5 Q. And so what did Mr. Jambor do?

6 A. He called -- I can't recall if he called Mr. Petters or  
7 Ms. Coleman, but anyways, he contacted his customer, which  
8 was the proper thing to do under banking practices in the  
9 United States.

10 Q. Actually, if you look at the first page of this  
11 document, do you see that Mr. Jambor actually sent this on  
12 by -- in writing by e-mail?

13 A. I do see that, yes.

14 Q. And was that an appropriate thing to do under the  
15 circumstances?

16 A. Yes. I would want my banker to do this for me if my  
17 bank had received this kind of solicitation.

18 Q. So if we then look back -- I just want to ask you,  
19 Mr. Grice, about the last item on this particular list  
20 created by Ms. Ghiglieri, and that's large overdrafts.

21 Do you recall Ms. Ghiglieri's testimony that large  
22 overdrafts in PCI's account were red flags of suspicious  
23 activity?

24 A. I do. I'm trying to recall the colorful language she  
25 used. They were flaming or glaring or they were something,

Grice - Direct

1 but they were big red flags, yes.

2 Q. And do you agree with that opinion, Mr. Grice?

3 A. No.

4 Q. Why is that?

5 A. Well, we heard testimony about this over the last few  
6 days. We heard from Chris Flynn's supervisor, who described  
7 these overdrafts not as overdrafts, but as NSF, insufficient  
8 funds conditions, which were corrected well within the time  
9 limits before this became an overdraft -- I'm sorry, before  
10 this became a -- yeah, before the account was officially  
11 overdrawn.

12 Q. So there was testimony that you heard in this trial that  
13 these were not, in fact, overdrafts?

14 A. Yes. I'm just forgetting the woman's name who was  
15 Mr. Flynn's supervisor.

16 Q. Ms. Crain?

17 A. Ms. Crain, exactly. Thank you.

18 Q. And even if these had been overdrafts, Mr. Grice, do you  
19 remember how many Ms. Ghiglieri identified?

20 A. I don't recall her number. I recall my own research. I  
21 think it was six or seven during the life of the  
22 relationship. So it's six or seven in six or seven years,  
23 which, by my measure, is a very modest number of NSF  
24 conditions or overdrafts during that time.

25 Q. So, Mr. Grice, just looking at the red flags of

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1 suspicious activity that Ms. Ghiglieri identified here, what  
2 is your view as to whether it's reasonable to view these  
3 actions as indications of suspicious activity in the PCI  
4 account?

5 A. I disagree with each of the six that she identified, and  
6 I think they are informed by hindsight bias.

7 Q. Mr. Grice, there were -- there was some concerns that  
8 Ms. Ghiglieri expressed that didn't make it onto that  
9 particular slide. I just want to ask you about a few of  
10 those.

11 Do you recall Ms. Ghiglieri's testimony that M&I  
12 gave PCI a special policy when it came to wire transfers  
13 into the account?

14 A. I do.

15 Q. Okay. What is your view of that concern?

16 A. I think she's factually incorrect.

17 Q. Why is that?

18 A. Under the Wire Transfer Agreement that was executed  
19 between the bank and PCI -- I'm sorry. Could you ask the  
20 question again? I just lost my train of thought.

21 Q. Yeah. So I had asked you whether you recalled  
22 Ms. Ghiglieri's testimony that there was a special policy  
23 when it came to wire transfers into the account.

24 A. Yeah. In the wire policy of M&I at the time, there was  
25 an allowance for this daylight overdraft extension. So it

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1 was allowed. So what she's calling a special accommodation  
2 was anticipated in the policy itself. So, therefore, I  
3 think this can't be considered an accommodation or an  
4 exception. This was contemplated in the drafting of the  
5 policy. And it didn't call out PCI or Tom Petters. It  
6 could apply to any customer that the bank chose to extend  
7 that to.

8 Q. And Ms. Ghiglieri also suggested that M&I provided PCI  
9 with extra handling by manually processing wire transfers  
10 even after PCI had signed up for online banking services.  
11 Do you recall that?

12 A. I do recall that.

13 Q. And do you have a view as to whether it was  
14 inappropriate under banking customs and standards for M&I to  
15 manually process wire transfers after PCI had signed up for  
16 online services?

17 A. This is one of the more unusual red flags. I have not  
18 seen this ever before. By my measure, before I ever read  
19 Ms. Ghiglieri's report or heard her testimony, I see a bank  
20 employee entering the data for my wire transfer as safer or  
21 better than trusting me or my employee to enter that same  
22 information.

23 Q. Why do you say that it's safer when the bank is  
24 inputting that information?

25 A. Well, there's a thing in banking called the fat thumb

Grice - Direct

1 syndrome or the fat finger syndrome where there's a mistake.  
2 Mistakes do happen. And I would rather -- if a mistake is  
3 going to occur, I would rather the bank be responsible for  
4 this than my own employee being responsible for it.

5 I've just never seen trusting a bank officer to  
6 perform a transaction as inferior to any other method. I  
7 just don't think in the banking business that's recognized  
8 as dangerous or suspicious or irregular.

9 Q. Ms. Ghiglieri also testified about a letter that  
10 Mr. Jambor sent to the board of directors of Polaroid. Do  
11 you recall that testimony?

12 A. I do.

13 Q. And in the letter Mr. Jambor stated that Petters  
14 affiliates had been a customer for five years and transacted  
15 in high dollar amounts. Do you remember that?

16 A. Yes.

17 Q. And Ms. Ghiglieri's view was that that letter was  
18 unusual or atypical and misleading. Do you agree with that?

19 A. No. In my experience, these are called good standing  
20 letters. They are not -- they are nothing more than  
21 describing a relationship and verifying that there is, in  
22 fact, a banking relationship between M&I and Tom Petters.  
23 So it's not an endorsement. It's not -- it's nothing more  
24 than stating a fact.

25 So these are done routinely and, again, they are



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1 carefully crafted because banks don't want to be making  
2 endorsements or assuming risk where all they intend to do is  
3 convey that we have had a relationship.

4 So it's like writing a letter of recommendation.  
5 When somebody says, yes, they were in my employment for a  
6 year or two, it, to me, is in the same vein. It's not  
7 anything more than a validation that there is, in fact, a  
8 relationship.

9 Q. And do you recall Ms. Ghiglieri's testimony that M&I, in  
10 her view, gave PCI some kind of special accommodation by  
11 maintaining it as a business banking account rather than  
12 moving it to some other part of the bank?

13 A. And again -- yes, I recall that.

14 Q. And was that suspicious in your view?

15 A. No. I think this week we've heard lots of testimony  
16 from two or three witnesses about the distinction between  
17 business and commercial banking. In my analysis --

18 MR. ANTHONY: Narrative answer.

19 THE COURT: Sustained.

20 BY MR. SCHAPER:

21 Q. Why is it your view, Mr. Grice, that there was nothing  
22 improper about maintaining the PCI account in the business  
23 banking group?

24 A. Because no matter where in the bank organization that  
25 9018 account is housed, all of the controls are the same.

Grice - Direct

1 Q. When you say "all the controls," what are you referring  
2 to?

3 A. I'm talking specifically about the anti-money laundering  
4 control, such as Searchspace. They are agnostic as to where  
5 the account is.

6 Q. So was a banking -- was a business banking account  
7 reviewed any differently from other business customer types  
8 in Searchspace?

9 A. No. I have seen no evidence to even suggest that.

10 Q. Let's talk about the Deposit Account Control Agreements  
11 that we've heard about in this case.

12 First of all, very briefly, can you -- are you  
13 familiar with those kind of agreements?

14 A. I am. They have been around longer than I have. They  
15 have been around for a long time.

16 Q. And can you just briefly explain to the jury what those  
17 kinds of agreements are.

18 A. These are common in different kinds of banking  
19 relationships, such as commercial real estate transactions  
20 or -- the first time I saw them was in a deposit  
21 relationship involving a cemetery funeral home perpetual  
22 care situation, where somebody purchases a plot and part of  
23 the price is also maintenance of the plot.

24 So I'm buying both the land and a perpetual  
25 maintenance contract for the care of that. The business

Grice - Direct

1 providing that care to the lawn or the landscaping has an  
2 interest in preserving their piece of that payment.

3 And so this DACA or DAMA arrangement allows for a  
4 protection against a party in a transaction.

5 Q. And I think it's clear from your answer, but did you  
6 encounter that type of arrangement before your work on this  
7 case?

8 A. Yes.

9 Q. We've heard that some of the bankers at M&I were not  
10 familiar with DACAs before the topic arose with PCI. Do you  
11 recall that?

12 A. I do.

13 Q. But just more generally in terms of banking custom and  
14 practice in the industry, were these type of agreements  
15 unusual?

16 A. Not by my understanding or by my experience. These have  
17 been in the industry for at least as long as I've been  
18 involved in banking.

19 Q. In your view, was M&I's decision to enter into DACA or  
20 DAMA agreements with PCI improper?

21 A. No.

22 Q. Let me just move to my final topic, Mr. Grice. You've  
23 given an opinion that M&I employees did not behave in a way  
24 that would be consistent with involvement in a financial  
25 fraud. Am I recalling that correctly?

Grice - Direct

1 A. Yes, sir, that's correct.

2 Q. And what experience are you drawing from in giving that  
3 opinion?

4 A. Internal investigations in banks where we suspect or we  
5 discover that an employee is having an improper relationship  
6 with a customer or somebody committing a fraud with or  
7 against the bank.

8 Q. And did you prepare a slide related to this opinion?

9 A. I did, yes, sir.

10 MR. SCHAPER: Mr. Herzka, if you would please put  
11 up DD-60, slide 20.

12 BY MR. SCHAPER:

13 Q. And the top there says, "Conduct of M&I Employees is  
14 Inconsistent with Involvement in Financial Fraud."

15 So, first of all, in your experience, Mr. Grice,  
16 do you expect to see efforts to limit access to an account  
17 if employees are participating in a fraud?

18 A. Can you just repeat the question? I guess I didn't hear  
19 it --

20 Q. Sure. Do you expect to see efforts on behalf of bankers  
21 to limit access to an account if employees are participating  
22 in a fraud?

23 A. Yes. In my experience, if an employee is engaging in an  
24 improper relationship, whether it's planned or actual, the  
25 last thing that employee wants to do is to broaden the

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1 circle and increase the number of colleagues who have access  
2 to the account or the information in the account.

3 Q. And why is that?

4 A. For fear of discovery. So in -- again, in my career, in  
5 my experience, once you make this mistake of conspiring  
6 against your bank, that is the end of your career. If  
7 caught, that's it. So you're betting your entire career on  
8 this one improper transaction or relationship. So the last  
9 thing you want is discovery.

10 Q. Okay. So let's talk about the evidence in this case.

11 Have you seen any evidence of efforts by M&I bankers to  
12 limit access to the PCI account?

13 A. No. In fact, on the contrary, we see the opposite.

14 Q. Can you explain what you mean by that.

15 A. Again, I'm -- it feels late in the day for me. But  
16 any -- there were instances in the relationship between M&I  
17 and PCI where the bank was attempting to broaden the  
18 relationship or deepen the relationship by selling  
19 additional products and services to PCI.

20 Q. And would those sales of other products in the bank have  
21 exposed the PCI account to other bank employees?

22 A. Yes.

23 Q. And other bank departments?

24 A. Yes. Particularly, there was an exploration of the  
25 possibility of a trust relationship, a trust department

Grice - Direct

1 relationship or a credit facility of some sort. Both of  
2 these would involve highly trained specialists who would  
3 have probing questions for PCI.

4 And then I heard Ms. Coleman, I guess it was  
5 Tuesday, testify that the last thing she was wanting was to  
6 have more bankers ask questions because she could not  
7 qualify for a loan. The financials were fraudulent.

8 Q. So is the -- is looking for opportunities to introduce  
9 bank customers to other parts of the bank, is that also  
10 called cross-selling?

11 A. Yes, sir.

12 Q. And you have heard testimony about cross-selling in this  
13 case?

14 A. Yes, sir.

15 Q. Is cross-selling unusual in the banking industry given  
16 your expertise?

17 A. It's the most common thing I see in banking. Not for  
18 sinister reasons. It's because banks, in fact, are trying  
19 to help customers get solutions to their problems. So you  
20 don't have to buy the service, but if you need it, you need  
21 to know that I have something available that may help you.  
22 So it's in your interest and mine.

23 Q. You testified just a few -- well, strike that.

24 What does the second bullet on your slide  
25 reference to, Mr. Grice?

Grice - Direct

1 A. "No evidence any M&I employee provided special  
2 assistance to Petters or PCI." This really gets to the  
3 DACA/DAMA question, the letter to Polaroid, the board of  
4 directors. I just see no evidence of anything out of the  
5 ordinary or unusual being provided to PCI.

6 Q. In your experience, including having reviewed other  
7 cases involving Ponzi schemes, would you expect to see a  
8 bank employee who was involved in some kind of fraud receive  
9 some kind of personal benefit?

10 A. I can't think of an example on cases I've worked on  
11 where somebody did this without a financial or pecuniary  
12 gain or motive. It's -- this is why you are jeopardizing  
13 your career. There's some benefit for the banker,  
14 ostensibly.

15 Q. And what -- in your experience and then we'll come back  
16 to this case, but in your experience, what type of benefits  
17 do bank employees typically receive if they are involved in  
18 some kind of financial fraud?

19 A. Illicit payments, creatively organized payments that are  
20 hard to trace, so usually cash or payments -- now we see  
21 Bitcoin payments outside of the United States. So  
22 hard-to-trace payments. Offers of paying children's college  
23 tuition or gifts of condos or apartments in Panama to make  
24 it less discoverable. So there are ways to make financial  
25 rewards available to people that are hard to trace.

Grice - Direct

1 Q. And did you see any evidence that any employee at M&I  
2 was personally enriched from their relationship with  
3 Mr. Petters or PCI?

4 A. None.

5 Q. Did you see any evidence of that with the various AML  
6 employees who we've heard testify in this case?

7 A. None.

8 Q. Did you see any evidence of that with the different  
9 bankers that we've heard testify in this case?

10 A. None.

11 MR. SCHAPER: No further questions at this time.

12 THE COURT: I have one instruction for the jury.  
13 Members of the Jury, you have seen and heard evidence  
14 pertaining to examinations conducted by the Federal Reserve  
15 Bank of Chicago. This evidence may be considered by you  
16 only for the purpose of evaluating the accuracy and  
17 credibility of the opinions and testimony of Catherine  
18 Ghiglieri and Charles Grice. This evidence may not be  
19 considered for any other purpose.

20 Okay. Are you ready to proceed, Counsel?

21 MR. ANTHONY: I am ready, Your Honor. May I  
22 proceed?

23 THE COURT: You may.  
24  
25



**CROSS-EXAMINATION**

BY MR. ANTHONY:

Q. Good afternoon, Mr. Grice.

A. Good afternoon.

Q. Before I get to the main part of my outline, you said something that caught my attention. I want to deal with that right off the bat.

You were asked who the owner of the 9018 account at M&I Bank was. Do you recall being asked that question?

A. I do, yes.

Q. And twice you said it was Tom Petters was the owner. Do you recall your answer?

A. I do recall that.

Q. That's inaccurate, right?

A. I understand it's inaccurate. Tom Petters controlled --

Q. No. Do you understand it's inaccurate?

MR. SCHAPER: Objection, Your Honor. Could the witness please be allowed to finish his answers?

MR. ANTHONY: I think he did, Your Honor, and he was going into a narration.

BY MR. ANTHONY:

Q. Do you now understand --

THE COURT: Counsel, I have not ruled --

MR. ANTHONY: I'm sorry, Your Honor.

THE COURT: -- on your objection, and it is not

1 your prerogative to continue until I do.

2 MR. ANTHONY: I apologize.

3 THE COURT: The objection is overruled.

4 MR. ANTHONY: Okay.

5 BY MR. ANTHONY:

6 Q. When you gave the answer that Tom Petters was the owner  
7 of this account, did you -- had you studied enough to know  
8 that he wasn't the owner? Was it just a mistake?

9 A. It was a slip of the tongue.

10 Q. Okay. So twice there was a slip of the tongue as to who  
11 the owner of the account was, right?

12 A. Yes.

13 Q. And, in fact, the owner of the account was PCI, Petters  
14 Capital [sic] Inc., correct?

15 A. Yes.

16 Q. And that's an important distinction. Because if the  
17 bank had any obligations, it was to PCI, the owner of the  
18 account, correct?

19 A. Um --

20 Q. Would you like me to rephrase?

21 A. Please, yeah.

22 Q. The bank had an agreement with PCI to open a depository  
23 account with the bank, correct?

24 A. Correct.

25 Q. PCI was a corporation, correct?

1 A. Correct.

2 Q. And PCI is the entity to whom the bank owed whatever  
3 duties it owed, correct?

4 A. I'm not a lawyer. So I recognize that's correct.  
5 However, as a banker, I see this as a Subchapter S closely  
6 held corporation controlled by Tom Petters. So if I'm  
7 incorrect, I'm incorrect, but that's my banker understanding  
8 of the effective control of PCI.

9 Q. Okay. Whether it was effective control or not, you knew  
10 the owner of the account was PCI, Inc., correct?

11 A. Yes.

12 Q. Okay. And the bank owed obligations to PCI, Inc. as the  
13 owner, correct?

14 MR. SCHAPER: Just object to the extent that  
15 counsel is calling for a legal conclusion.

16 THE COURT: Overruled.

17 THE WITNESS: Yeah, I can't engage in a debate  
18 about business law because I am not an expert on business  
19 law.

20 BY MR. ANTHONY:

21 Q. So given your 35 years of banking experience, you're  
22 saying you have no opinion as to whether the bank owed  
23 duties to the party that was the co-party to the agreement  
24 of the account-opening agreement; is that your testimony?

25 A. No, sir.

Q. Yes, sir?

A. I said, "No, sir."

Q. So can you say that, in your 35 years of banking experience, when a corporation opens an account with a bank, that the bank owes a duty to the corporation?

A. Again, I'm not here to offer legal opinions. I recognize that there's a duty to the corporation. And as I said earlier, my understanding is it's a Subchapter S effectively controlled, in my language, by Tom Petters.

Q. Okay. Now, you know that Mr. Petters and Ms. Coleman and Mr. White were officers of this corporation, correct?

A. Yes, sir.

Q. And you know that the officers of this corporation were writing to themselves tens of millions of dollars of checks, correct?

A. In the aggregate, yes, sir.

Q. Yes. And you now know that Mr. Kelley is the trustee who is representing the corporation, PCI, who is seeking to recover funds from those who he claims have caused harm to PCI, correct?

A. I understand that's the nature of his complaint, yes, sir.

Q. And, in fact, you also understand he's gone after Mr. Petters and Ms. Coleman and Mr. White to recover the funds they have taken from PCI, correct?

1 A. I have an understanding of that, yes, sir.

2 Q. And he's doing that on behalf of PCI, correct?

3 A. Yes, sir. He's in -- he's now got effective control of  
4 the estate, yes.

5 Q. I think -- I just want to touch on the fact -- I think  
6 you said you've never been a bank examiner, correct?

7 A. That's correct.

8 Q. Never been a bank regulator, correct?

9 A. That's correct.

10 Q. Never been a commissioner of banks in any state in the  
11 United States, have you?

12 A. That's correct.

13 Q. I'm going to show you the demonstrative you were using.  
14 It's slide 5 of DD-60.

15 A. Do I have that here?

16 Q. You have it on the screen --

17 A. Oh, there we go.

18 Q. -- or it's in the demonstrative booklet that your  
19 lawyers gave you.

20 A. I'll use the screen. Thank you.

21 Q. Now, you put on here -- you -- did you prepare this?

22 A. It was done under my direction, yes, sir.

23 Q. Who prepared it?

24 A. My team.

25 Q. Okay.

1 A. I don't know how it was actually wordsmithed or  
2 produced, but these are my ideas put on a slide.

3 Q. Okay. And, in fact, that's similar to the way you did  
4 your report, right? You didn't actually write the report,  
5 your team wrote the report, right?

6 A. I wrote the report. As I said in my deposition, I don't  
7 know how to type footnotes, and there are 400 of them or  
8 something. So it took a team to produce it.

9 Q. In fact, you also had your lawyers review it and edit it  
10 before you finished it, right?

11 A. That wasn't my experience.

12 Q. Pardon?

13 A. That's not my understanding or experience.

14 Q. Your lawyers didn't look at it before you finished it?

15 A. I don't know. I did not sit with my lawyers ever during  
16 the production of these two reports.

17 Q. May they have also made edits to your report?

18 A. I'm sorry. What's the question?

19 Q. May your lawyers have made -- may BMO's lawyers have  
20 made edits to your report?

21 A. I don't recall that being the case.

22 MR. ANTHONY: Why don't you get his deposition.

23 BY MR. ANTHONY:

24 Q. We'll come back to that.

25 Do you know if your lawyers made edits to your

1 report?

2 MR. SCHAPER: Your Honor, may the witness have a  
3 copy of --

4 MR. ANTHONY: I'm not yet to impeach him. I'm not  
5 about -- I'm just asking the question.

6 BY MR. ANTHONY:

7 Q. Do you know if your lawyers made edits to your report?

8 MR. SCHAPER: Objection as to the form of his  
9 lawyers.

10 MR. ANTHONY: I'm sorry.

11 THE COURT: Sustained.

12 BY MR. ANTHONY:

13 Q. Do you know for a fact whether Mayer Brown provided  
14 typed edits to your report?

15 A. So this was four or five years ago. I just don't  
16 recall.

17 Q. Okay. All right. Let's look at -- back to DD-60 at 5.

18 So in December of '01 M&I acquires NCB -- that's  
19 National City Bank, correct?

20 A. Yes, sir.

21 Q. -- and the 9018 account. That's the PCI account, right?

22 A. Yes, sir.

23 Q. The corporate account?

24 A. Yes, sir.

25 Q. Okay. And at that time, in 2001, M&I was obligated to

1       comply with the Bank Secrecy Act, correct?

2       A.   Correct.

3       Q.   Was supposed to be, I think in some of the materials we  
4       saw, the first line of defense to money laundering and  
5       things of that nature, correct?

6       A.   Are you referencing M&I training materials?

7       Q.   Yes.

8       A.   I recognize that, yes.

9       Q.   All right. And the bank was supposed to continue to  
10       be -- to comply with the Bank Secrecy Act from 2001  
11       through 2008, correct?

12       A.   Yes, sir.

13       Q.   And I think you used the words the bank's obligations  
14       were to monitor, detect, investigate, and then be thoughtful  
15       about whether or not to file a SAR, correct?

16       A.   Yes, to do an investigation and then file a quality SAR,  
17       yes.

18       Q.   And the -- from 2001 to 2008, how much money in billions  
19       do you recall went through the M&I PCI account -- the M&I  
20       Bank PCI account?

21       A.   I don't have that number in my mind. Several people  
22       have testified to that.

23       Q.   So --

24       A.   I don't know that specific number.

25       Q.   You knew it was billions, correct?



1 A. I know to the billions.

2 Q. So if there has been testimony that it was 73 billion,  
3 you wouldn't have any information to dispute that, would  
4 you?

5 A. No. I'm not doing the forensic accounting or the  
6 damages analysis at all.

7 Q. And the bank, M&I, had all the wire transactions that  
8 would account for the \$73 billion that went through the  
9 bank, right?

10 A. Well, by definition it's passing through the bank, so --

11 Q. So that's "yes"?

12 A. Well, if you're asking did they have data, yes. The way  
13 you phrased the question, they had the money. The money  
14 went into the account and then was sent out, but they had  
15 the data about the transactions.

16 Q. Did the bank have whatever information it needed or was  
17 required to have by federal rules and regulations with  
18 respect to all activity with respect to the wires going back  
19 between PCI and any other company?

20 MR. SCHAPER: Objection to form, vague.

21 THE WITNESS: I have seen no evidence that the  
22 bank --

23 THE COURT: Overruled.

24 THE WITNESS: I'm sorry.

25 THE COURT: You may answer.

1 THE WITNESS: I have seen no evidence that the  
2 bank's records were inaccurate.

3 BY MR. ANTHONY:

4 Q. Okay. So the bank had all the information in its  
5 records to keep an eye on the wire transactions, correct?

6 A. I would say the bank had all the data on the wire  
7 transactions in its possession.

8 Q. What's the difference between data and records?

9 A. Data and records are the same. You used the word  
10 "information" --

11 Q. Okay.

12 A. -- which to me is more refined than data.

13 Q. Okay. So they had information, data, and records,  
14 correct?

15 A. Well, you're changing the question. Originally it was  
16 did they have data. I agree they have data. They had the  
17 data on the transactions.

18 Q. Can we agree they had the data and the records of the  
19 transactions?

20 A. I can agree to that.

21 Q. Okay. And they were supposed to monitor that data and  
22 records to determine if there was any suspicious activity,  
23 correct?

24 A. Yes, sir.

25 Q. And in addition to having the data and records for the

1 wire transactions, they had the monthly bank statements,  
2 correct?

3 A. They produced monthly bank statements, yes.

4 Q. Not only did they have them, it was the bank's job to  
5 produce them, right?

6 A. Under the account agreement, that's what banks do.

7 Q. And they also had what we've seen in this proceeding,  
8 the money transfer statements showing the wire activity,  
9 correct?

10 A. Yes, sir, that's correct.

11 Q. Okay. And the bank had would you say it was data or  
12 records that showed the checks going out routinely to the  
13 officers of PCI? Would you call that data or records, those  
14 checks?

15 A. I guess I'm not understanding what you mean by  
16 "routinely." We saw the checks. We've seen many of the  
17 checks in exhibits during the trial. The bank had that  
18 information. They had that -- they had that data.

19 Q. Okay.

20 A. They had those records.

21 Q. So whenever the checks for millions of dollars went out  
22 to the insiders, the banks had the records and the data that  
23 showed that, right?

24 A. Yes. And I have seen no evidence that they were  
25 inaccurate in the way they processed these transactions.

1 Q. All right. And the bank also had data or records that  
2 showed billions of dollars coming in from Enchanted,  
3 correct?

4 A. Yes, sir.

5 Q. And billions coming in from Worldwide [sic], correct?

6 A. Yes, sir.

7 MR. SCHAPER: Objection, misstates the record.

8 BY MR. ANTHONY:

9 Q. Nationwide. I'm sorry. I didn't mean to say  
10 "Worldwide."

11 A. I understood what you were getting at.

12 Q. Okay. And the bank also had records and data which  
13 would have showed if any wires came in from big-box  
14 retailers, correct?

15 A. Yes, sir. They had all the data and the records for the  
16 transactions that passed through the account.

17 Q. Now, you didn't see any records or data or any evidence  
18 that anyone -- any employee of the bank reported any  
19 activity in PCI as being suspicious, correct?

20 A. Nothing rose to the level of suspicious in this  
21 relationship.

22 Q. That was a little different. My question is not whether  
23 anything rose to that level. I asked you if you saw anyone  
24 from the bank, any bank employee who reported any suspicious  
25 activity.

1 A. These are important differences. So there were no  
2 determinations made of suspicious by the bank during the  
3 life -- during the 2002 to 2008 time frame.

4 Q. So if the bank never made that determination, then it  
5 never made any report, correct?

6 A. We've talked about the confidentiality reports. I have  
7 intentionally not tried to understand if the bank filed a  
8 SAR. Is that what you are asking?

9 Q. No. I'm asking you if you saw any evidence that any  
10 bank employee reported to anyone, including their  
11 supervisors, whether they saw any suspicious activity.

12 A. I have seen no evidence of reports of suspicious  
13 activity by any bank employee.

14 Q. Did you see any reports by any bank employee of any  
15 unusual activity?

16 A. I think the answer to that is also, no, I have not seen  
17 any evidence of that.

18 Q. And did you see any reports, for example, that the  
19 bank's customer -- the bank's customer, PCI, was doing  
20 business with a money launderer?

21 A. Can you ask that again, please, or maybe rephrase it?

22 Q. Did you see any reports from any bank employee to  
23 anyone, including their supervisors, that PCI was doing  
24 business with a convicted money launderer?

25 A. I don't recall seeing that.

1 Q. And you saw no reports of any suspicious or unusual  
2 activity from 2002 to 2008, correct?

3 A. Can I just lay on the table I'm very uncomfortable  
4 talking about suspicious activity given my earlier  
5 discussion in my direct examination about the  
6 confidentiality requirements around SARs. I never sought to  
7 understand if SARs were filed. And if I did, I would feel  
8 uncomfortable talking about it.

9 Q. I'm not asking about SARs. I'm asking if they  
10 reported -- let's stick to their supervisors. Did you see  
11 anyone report to their supervisors that they thought any of  
12 the checks to the insiders, the wires to the insiders, the  
13 billions of dollars from Enchanted and Worldwide [sic] were  
14 enough to cause anybody to be suspicious?

15 A. I don't believe so. I don't recall.

16 Q. Now, I'm going to show you another exhibit. It's DD --  
17 it's the defendant's demonstrative from yesterday, DD-50, at  
18 slide 15.

19 MR. ANTHONY: Is this on? Are we on?

20 MS. ELLIG: No. Do you want it up here?

21 MR. ANTHONY: Sure. Thank you.

22 BY MR. ANTHONY:

23 Q. Now, yesterday we heard testimony from another bank  
24 expert, a Mr. Jarek, who said that if the scheme had been  
25 stopped in 2001, that the losses would have been about

1 \$500,000.

2 MR. SCHAPER: Objection, Your Honor, this is  
3 beyond the scope of Mr. Grice's report. This was the  
4 damages expert issue. It's nowhere in Mr. Grice's report.

5 MR. ANTHONY: Your Honor, this is  
6 cross-examination of this experienced expert who said there  
7 was no evidence whatsoever of any wrongdoing. I think I'm  
8 entitled to test his credibility with these exhibits that  
9 they prepared.

10 MR. SCHAPER: He is an expert in bank regulatory  
11 matters, Your Honor. He's not a damages expert, and we did  
12 not offer him as such. I'm not sure of the relevance to his  
13 testimony of this.

14 THE COURT: The objection is overruled. Counsel,  
15 you need to keep your questions tethered to the testimony  
16 that has been provided and the basis for offering this  
17 witness.

18 MR. ANTHONY: Okay.

19 BY MR. ANTHONY:

20 Q. Did you -- in your opinion that nobody did anything  
21 improper or outside of the ordinary and usual course of  
22 business, did you take into consideration the losses that  
23 occurred, that PCI sustained in the seven years that the  
24 M&I -- the PCI account was with M&I Bank?

25 A. I don't understand the question, which I think is the

1 answer. I'm unfamiliar with this data or how it relates to  
2 my opinion at all.

3 Q. So you weren't here to see Mr. Jarek yesterday?

4 A. No. I missed Mr. Jarek entirely.

5 Q. And you didn't read his testimony?

6 A. I have not read it yet.

7 Q. Okay. So you have no knowledge of the information that  
8 appears on the screen now; is that correct?

9 MR. SCHAPER: Objection, asked and answered.

10 THE COURT: Sustained.

11 THE WITNESS: I don't recall ever seeing it.

12 MR. ANTHONY: Okay. Ms. Ellig, would you put up  
13 Plaintiff's Exhibit 398, please.

14 BY MR. ANTHONY:

15 Q. Do you have that in front of you, Mr. Grice?

16 A. Yes, sir, I do.

17 Q. Okay. I can't remember. Did you cover this with  
18 counsel in your direct testimony?

19 A. I can't either.

20 Q. Okay. Let's look at page 5 of Exhibit -- Plaintiff's  
21 Exhibit 398. And this -- you recognize this as one of the  
22 bank's policies as to what AML analysts should be looking  
23 for when they are doing these Searchspace alerts, correct?

24 A. Yeah. Give me just a moment if you would, please, to  
25 situate myself.



Q. And I'll let you do that, and you look up and tell us when you are ready.

(Witness reviews document)

A. Yes, sir, I recognize this as March -- I'm sorry, June 7, 2006 --

Q. Okay. Let's highlight some of the things that are referenced in this exhibit.

And this talks about comments. Do you see at the top it says, "Comments in Searchspace for 'closed to expected or explainable activity'"? Do you see that?

A. I'm looking for my copy and trying to --

Q. It's page 5 on the bottom.

A. Yes, sir, I see it.

Q. All right. And so let's go to the second bullet point. And one of the things that the analyst has to look for is who is the customer and what kind of business, correct?

A. Yes, sir.

Q. And then if we go down to -- it would be the paragraph -- bullet point seven, "Describe analysis completed."

A. "E.G., discussion," is that --

Q. Yeah.

A. Yes, sir, I see that.

Q. And that describes what the analyst is supposed to do, correct?

1 A. Yes, sir.

2 Q. And then at the bottom it says -- let's go to the last  
3 one and the last sentence. "Make sure that a conclusion is  
4 reached and supported in your comments."

5 A. Yes, sir, I see that.

6 Q. That's -- and we're doing it at a high level what the  
7 AML analyst is supposed to do, right?

8 A. Could you ask the question a different way?

9 Q. Sure. We're describing for the jury what an AML analyst  
10 is supposed to do, correct?

11 A. Yeah, these -- I call these the desktop procedures.  
12 These are the instructions to the AML analysts for how to  
13 memorialize the work they did in support of their  
14 conclusion.

15 Q. Okay. Let's turn to the next page, 6, of  
16 Plaintiff's 398. And under the heading 2, let's go to the  
17 second paragraph. It says, "Analysts will be required to  
18 look at everything, but only document what alerted AND the  
19 source or use of funds." Do you see that?

20 A. I do.

21 Q. Then it says, "Of course, if other unusual activity is  
22 identified, that should be commented on as well."

23 A. Did you say, "If other"? I didn't hear the "if," but --

24 Q. Yes, I did.

25 A. Okay. All right.

1 Q. So that's another thing the analyst has to do, correct?

2 A. That's what this procedure calls for, yes.

3 Q. And we'll see it later on, but you recall the -- did you  
4 ever review the alert that had the \$10 million payment for  
5 the yacht?

6 A. Yes.

7 Q. Is that the kind of unusual activity in an account like  
8 this that one would expect an AML analyst to comment on as  
9 being unusual?

10 A. It was called out and commented on.

11 Q. Well, it was called out, but they didn't explain why it  
12 related to the business purpose of the business, did it?

13 A. No, but I don't think it needed to.

14 Q. I know. Let's start with: There wasn't a description  
15 of how it related to the business, correct?

16 A. There was not a discussion of how it related to the  
17 business.

18 Q. And I know your view is they didn't need to point out  
19 how it was related to the business, correct?

20 A. That is my opinion.

21 Q. All right. So if you saw something that was unusual and  
22 it -- you didn't have anything in the prior alerts that  
23 related to yachts or boating and it was for \$10 million,  
24 don't you think it would trigger in the analyst's mind that  
25 this is out of the ordinary?

1 MR. SCHAPER: Objection, calls for a state of mind  
2 conclusion.

3 THE COURT: Sustained.

4 BY MR. ANTHONY:

5 Q. Let me ask you that. In the ordinary course of banking  
6 business, an analyst who saw a \$10 million payment for a  
7 yacht out of the PCI account when PCI had nothing to do with  
8 yachting, would, in the ordinary course of business, an  
9 analyst have thought that to be unusual?

10 MR. SCHAPER: Same objection --

11 MR. ANTHONY: I didn't ask about -- I'm sorry. I  
12 didn't ask about an M&I Bank analyst. I asked about the  
13 practice in the industry, and he testified at length about  
14 that.

15 MR. SCHAPER: I think the question was asked to  
16 the PCI account, so I don't think that that was a broader  
17 question than that.

18 THE COURT: Sustained.

19 BY MR. ANTHONY:

20 Q. Okay. Let's get away from PCI and the M&I account and  
21 the \$10 million for the yacht in the M&I account and talk  
22 generally.

23 If an analyst saw \$10 million for a yacht for a  
24 company that had no business having to do with maritime  
25 affairs or yachting, is that the kind of activity, in the

1       ordinary course, an analyst might say I have never seen this  
2       before, it's unusual?

3       A. I guess my view is in that hypothetical we're seeing an  
4       analyst call it out, right? They are drawing attention to  
5       this.

6               And to be clear, we don't know this is the  
7       purchase of a yacht. We know it's a payment to a law firm  
8       and a broker in a yachting business. I'm not disputing that  
9       a yacht may have been involved in that. But the analyst is  
10      drawing attention to the \$10 million transaction with  
11      Bosshardt, which is, you know, a legal/brokerage business  
12      involving yachting.

13             So I think -- so maybe the difference is about the  
14      quality of the documentation after calling it out. I'm not  
15      troubled by that. So I'm comfortable with the fact it's  
16      been identified, it's been called out by the analyst. And  
17      I'm comfortable that for banks similarly situated to M&I at  
18      the time, this would be reasonable.

19      Q. And you agree that, in looking at the example we just  
20      gave about the yacht, that the analyst has to ensure him or  
21      herself that she understands and can explain what is going  
22      on with respect to that transaction, correct?

23      A. I would want that, yes.

24      Q. Let's scroll down where it says, "Ensure that you  
25      understand and explain what is going on in the account."

1           In the hypothetical we used, is it custom and  
2           practice in the industry when you see something like a  
3           \$10 million payment for a yacht, attorney, or broker, that  
4           it should be explained more than just identified?

5           A. Not in my opinion.

6           Q. Okay. And let's go down to "Wire Example" in the same  
7           document. You'll agree that the AMI -- the M&I analysts had  
8           to have documented what would be needed for the source of  
9           incoming wires and what the funds appeared to be used for,  
10          correct?

11          A. I -- that's what this procedure calls for. I agree that  
12          that's what this is calling for.

13          Q. Okay. And is it your testimony that with respect to all  
14          the alerts we've seen in this case, that each and every one  
15          of them -- in each and every one of them the AML analyst  
16          explained what the source of the incoming wires was?

17          A. To my satisfaction. Maybe not to yours, but to my  
18          satisfaction.

19                 So I think consistent with expectations of the fed  
20                 and consistent with the industry custom and practice at the  
21                 time, the focus of the analyst was properly on the  
22                 transactions and whether those transactions could be  
23                 recognized as common or ordinary for that account.

24                 That's not, I think -- that's not Ms. Ghiglieri's  
25                 definition, that's not her objective or goal, but that's

1 mine. So mine is a recognition of the transactions as  
2 consistent with prior transaction activity of the account.

3 Q. Okay. Let's talk about that prior transaction activity  
4 opinion you gave. Let's look at Exhibit 183.

5 A. Do I have that? I don't think I have that.

6 (Pause)

7 A. I do have that. I see it. This is the alert?

8 Q. Do you have it?

9 A. I believe so. What -- I don't know what page you're  
10 going to, but I see a tab for 183.

11 Q. And let's look at page 38 of Exhibit 183, please. This  
12 is the one you were shown.

13 MR. ANTHONY: And highlight the third column down  
14 dated 6-6-2006 at 9:54 and then the one underneath it and  
15 then the one underneath that, so all three of them are up  
16 there.

17 THE WITNESS: So you're talking the 9:55 -- the  
18 two 9:55 entries?

19 BY MR. ANTHONY:

20 Q. I'm talking about the 9:54, 9:54, 9:55, the ones on the  
21 screen. Does that help you?

22 A. Yes, I see where you are. Yes, sir.

23 Q. Okay. Now, what I understood you to say was that the  
24 reviewer, the analyst could rely on the history of the  
25 account, correct?

1 A. That's correct.

2 Q. And what had gone before her review, correct?

3 A. Of course.

4 Q. And we see that it appears as though a lot of these  
5 analysts have relied on what went before them on the  
6 history, correct?

7 A. I call this additive, but we see reflections of prior  
8 analysis or facts that were referenced in earlier  
9 discussions.

10 Q. And what is the first one, the first alert that was  
11 closed?

12 A. You want the number of it or the date?

13 Q. Yeah. Do you have the date?

14 A. I think these are in chronological order and I think  
15 it's the first tab, 53247.

16 Q. Let's go to page 9 of Exhibit 183. And so let's -- this  
17 is dated April of '05. Let's go to the bottom of that  
18 alert.

19 A. Well, it's May 6 of '05 for April of '05 if we're on the  
20 same thing. Page 9 of 183?

21 Q. At the top it says, "April 2005." That's what I was  
22 referring to, sir.

23 A. Right. But the date this is raised is May 6. So it's  
24 about the month of April '05.

25 Q. Okay. In any event, let's go to the first comment. It



1 says, "Petters Company, Inc." Do you see that?

2 A. Yes.

3 Q. And then it goes to the next box and it says, "Petters  
4 is a collection of nearly 20 companies." Correct?

5 A. Correct.

6 Q. Now, we know that Petters Company, Inc. is not a  
7 collection of 20 companies, correct?

8 A. We know that today, yes.

9 Q. Well, certainly it was information that was capable of  
10 being known back on May 6th, 2005, wasn't it?

11 A. I'm not here to quarrel about what was knowable. My  
12 position is -- and this is back to your very first question.  
13 I think this may be a difference without a distinction in  
14 the AML space. I'm looking for effective control. The fact  
15 that PCI may not, in fact, be the owner of 20 companies is  
16 not top of my concern list.

17 Q. Sir, I wasn't asking you about the AML space. I'm  
18 asking you about: Didn't the bank know in 2005 who its  
19 customer was?

20 A. I don't know how to answer that. Yes, it's listed --

21 Q. Okay. Thank you.

22 A. -- the customer name is, at the top of the page.

23 MR. ANTHONY: Your Honor, I would ask if the Court  
24 would invite the witness to answer the question; and once  
25 he's done that, not narrate. I'm trying to make it precise,

1 my questions.

2 MR. SCHAPER: That was a short answer to the  
3 question, Judge.

4 THE COURT: Please respond to the question asked.

5 THE WITNESS: Yes, Your Honor.

6 BY MR. ANTHONY:

7 Q. My question is: Would you agree that the bank had  
8 information in its data and records that showed that Petters  
9 Company, Inc. was its customer in 2005?

10 A. Yes, and that's reflected at the top of page 183-0009.

11 Q. Okay. Again, your answer is "yes," correct?

12 A. Yes.

13 Q. All right. Now, Petters Company, Inc. was also known to  
14 the bank employees to be something other than a collection  
15 of nearly 20 companies, correct?

16 MR. SCHAPER: Objection, form, vague, and calls  
17 for employee knowledge.

18 THE COURT: Overruled. You may answer if you can.

19 THE WITNESS: Could you ask it again or  
20 differently? I'm just -- you're asking about all the  
21 employees and I'm -- certainly this employee has an  
22 inaccurate understanding as I sit here today.

23 BY MR. ANTHONY:

24 Q. Okay. Well, you would presume that the employee who was  
25 filling out this comment would have an accurate

1 understanding of who the customer was, wouldn't you?

2 A. What was the verb? I would presume? Sir, I'm asking  
3 just to be clear on your question so I can answer it.

4 Q. In the ordinary practice of banking, wouldn't you expect  
5 the bank employees to know who the customer is?

6 A. Yes.

7 Q. Okay. So apparently, since PCI was not a collection of  
8 20 companies, this comment is mistaken, correct?

9 A. I'll grant it's -- yes, it's mistaken.

10 Q. Right. And there's no reference in this first alert to  
11 incoming -- the amounts of incoming wires and things like  
12 that. Do you see that?

13 A. And, again, I'm sorry to ask you to repeat the question.

14 Q. Okay. Do you see anything in this first alert from  
15 Enchanted or Nationwide?

16 MR. SCHAPER: Objection, mischaracterizes the  
17 document as the first alert.

18 THE WITNESS: There's no reference to Enchanted or  
19 Nationwide --

20 THE COURT: I need to respond.

21 THE WITNESS: Oh, I'm sorry. Forgive me.

22 THE COURT: Sustained.

23 BY MR. ANTHONY:

24 Q. Okay. Looking at page 9 of Exhibit 183, do you see any  
25 reference to Enchanted or Nationwide in this alert?

1 A. No, they are not discussed in this alert.

2 Q. So this goes back to your -- to what we were talking  
3 about about history and how important it was, you said, for  
4 the analysts to rely on history, correct?

5 A. Yes, sir.

6 Q. And if there's mistakes early on in the closing of the  
7 alerts and the subsequent analysts rely on the earlier  
8 history, they may also be mistaken, correct?

9 A. Yes.

10 Q. Okay. So if the first analyst looking at these alerts  
11 closes it and makes a mistake and subsequent analysts look  
12 at the first -- the earlier reports, they may make a similar  
13 mistake, correct?

14 A. That's possible, yes, sir.

15 Q. But we also know that the analysts can't rely entirely  
16 on the previous history, correct?

17 A. I agree with that, yes, sir.

18 Q. Yeah. In fact, they are told by the bank policies and  
19 the regulators that they have to look at each of these  
20 alerts individually and both monitor, detect, and  
21 investigate them where appropriate, correct?

22 A. Yes, but I want to be clear we're talking about --  
23 there's an important difference between the bank's  
24 instructions to its AML analysts and industry custom and  
25 practice and fed requirements.

1 Q. Okay.

2 A. So this is -- this would be inconsistent with the bank's  
3 internal processes for AML alert discussions or  
4 documentation of AML alert investigations.

5 Q. And do you think it reasonable for customers like PCI to  
6 rely on the bank to follow its own policies?

7 A. I never thought about that. I think with respect to  
8 treatment of the customer, yes.

9 Q. Well, is there any exception to the expectation, in your  
10 view, that a customer like PCI can't rely on the policies of  
11 the bank?

12 MR. SCHAPER: Objection to form, vague.

13 MR. ANTHONY: I'll rephrase it. That's a bad  
14 question, Your Honor.

15 BY MR. ANTHONY:

16 Q. We can agree that customers can -- should be able to  
17 rely on the bank following its own policies, correct?

18 A. I think for some reason I can't answer this question.

19 This is --

20 Q. Okay. Thank you.

21 A. -- outside my purview.

22 Q. That's fine.

23 A. This is a process that's outside the view of a  
24 customer --

25 MR. ANTHONY: Your Honor, again, he's narrating

1 and I'd ask that he not narrate.

2 THE COURT: Please answer the question.

3 THE WITNESS: Yes, Your Honor.

4 THE COURT: And I will ask all devices to be  
5 turned off or silenced in the courtroom.

6 BY MR. ANTHONY:

7 Q. Okay. Can you turn to 183, page 39, please. All right.  
8 So let's look at the second box down, the Disney on Ice  
9 tickets.

10 And I've looked at all these alerts. And you have  
11 too, right?

12 A. Yes, sir.

13 Q. Okay. And we now see event tickets for Disney on Ice on  
14 this one alert, right?

15 A. Yes, sir.

16 Q. So we know at least Ms. Pesch had access to checks in  
17 order to determine that Disney on Ice should be mentioned,  
18 correct?

19 A. Correct.

20 Q. Now, the bank analysts also had access to all the bank  
21 checks that were made out to Mr. Petters, Mr. White,  
22 Ms. Coleman, Ms. Coleman's boyfriend.

23 Did you ever ask Ms. Pesch why she never noted any  
24 of those checks in any of these alerts? I just want to know  
25 if you asked her.

1 A. I have never spoken to Ms. Pesch.

2 Q. In fact, you've never spoken to any bank employee,  
3 right, about this matter?

4 A. That's correct.

5 Q. In fact, as I recall, you said in an affidavit or  
6 somewhere that the best way to find out information about  
7 what's going on in a bank is to talk to the bank employees,  
8 right?

9 A. Yes.

10 Q. But you didn't talk to any of the bank employees in this  
11 case, correct?

12 A. Yes, and I can explain why.

13 Q. I know you're going to explain why.

14 You didn't interview them at all, correct?

15 A. That's correct.

16 Q. You never asked Mr. Flynn about -- the money launderer,  
17 Frank Vennes, correct?

18 A. I never interviewed any bank employee, so by extension  
19 that also applies to Mr. Vennes, correct.

20 Q. And you never interviewed Mr. Jambor about any  
21 conversation he had with Ms. Coleman in which she said she  
22 told him that the business was going to be selling -- PCI  
23 was going to be selling electronics to big-box retailers,  
24 correct?

25 A. That's correct. I relied on deposition transcripts --

1 Q. Right.

2 A. -- for my understanding.

3 Q. Same is true with respect to talking to Ms. Rhode,  
4 Mr. Jambor's boss, you never spoke to her either, did you?

5 A. I have never spoken to any of the M&I employees.

6 Q. You had access to them if you wanted, correct?

7 A. I did not ask for it. So I never tried. So I don't  
8 know the answer to that question. I didn't attempt to  
9 interview anybody from M&I.

10 Q. So you don't know if the bank would have denied you  
11 access to interview them?

12 A. I don't know because I never asked, that's true.

13 Q. I know you say you didn't talk to any bank employees,  
14 but let me ask you this. Do you recall any -- you read the  
15 transcripts, did you?

16 A. I read 60 transcripts. Some of them were multiple  
17 depositions of the same witness.

18 Q. Yeah. So did you see anywhere in Ms. Pesch's transcript  
19 where she explained why she didn't mention any of the tens  
20 of millions of dollars in checks that were made out to the  
21 insiders?

22 A. Sitting here, I don't recall if that was asked of her in  
23 her depositions.

24 Q. Well, if you read her deposition and it wasn't asked,  
25 wouldn't that be something you'd want to ask her?



1 MR. SCHAPER: Objection, calls for speculation.

2 THE COURT: Overruled.

3 THE WITNESS: I've explained I'm relying on the  
4 depositions in this case because there are so many. And  
5 counsel has had so many opportunities to ask questions of  
6 the witnesses, I didn't feel I should attempt to interview  
7 them additionally. There would be no benefit from that.

8 BY MR. ANTHONY:

9 Q. Right. But my question was: If you didn't see that  
10 question asked of her in the deposition, did you think to  
11 take it on yourself to ask her?

12 A. I did not.

13 Q. So was it not important to you, in giving your opinion,  
14 to know whether Ms. Pesch even knew about the tens of  
15 millions of dollars in checks made out to the insiders?

16 A. You are asking me a question -- I can't recall if I've  
17 ever had that question in my mind. So when I read her  
18 transcript, I relied on her sworn testimony.

19 And I understood the history of those checks and  
20 the treatment of those checks. I didn't have any questions  
21 about the analysts' understanding of those checks. I was  
22 relying on my own understanding of those checks.

23 Q. Okay. So setting aside the checks, these same analysts  
24 who were reviewing these alerts, they also had access to the  
25 wires that were being sent to Petters, Coleman, and White,

Office - Cross

1 correct?

2 A. Correct.

3 Q. Did you see anywhere in any of these alerts where any of  
4 these analysts mentioned anywhere that tens of millions of  
5 dollars were being wired out of PCI to Tom Petters?

6 A. I don't recall, across the 39 alerts, any discussion of  
7 wires to insiders.

8 Q. Okay. And that --

9 A. Again, my understanding was these were properly  
10 authorized, but I just don't recall sitting here.

11 Q. That would include Ms. Coleman and Mr. White, correct?

12 A. And Mr. Petters, yes.

13 Q. Okay. So because you didn't see any reference to wires  
14 to those insiders for tens of millions of dollars, did you  
15 think to ask any of these analysts yourself why they didn't  
16 mention the wires?

17 A. I've -- we've already discussed I did not ask any M&I  
18 employees any questions. So I've never asked any M&I  
19 employee any question.

20 Q. So --

21 A. And I was not troubled by the wires.

22 Q. So your answer is you did not ask any M&I employees any  
23 questions; is that your answer?

24 MR. SCHAPER: I think the answer is longer than  
25 that, Your Honor.

1 MR. ANTHONY: It is, Your Honor, and I'll move to  
2 strike everything beyond what I just said.

3 MR. SCHAPER: We object to that. We oppose that  
4 motion. He answered the question.

5 THE COURT: Pardon me?

6 MR. SCHAPER: We oppose the motion. He answered  
7 the question.

8 THE COURT: The motion is denied.

9 BY MR. ANTHONY:

10 Q. Okay. So you say you were not troubled by the wires.  
11 You say you were not troubled by the wires. Do you know how  
12 much in wires were sent to Petters, Coleman, and White? Any  
13 idea? I just want to know the amount. Do you have any idea  
14 as to the amount?

15 A. In my mind, I don't have that number. It's in the  
16 several million dollars, but I don't have the specific  
17 number.

18 (Plaintiff's counsel confer)

19 BY MR. ANTHONY:

20 Q. Well, do you think it was closer to a million or  
21 80 million?

22 A. I just -- this is not my -- this is not what I studied.  
23 I did not study the scale of the transactions with any  
24 specificity and I cannot recall.

25 Q. In order to determine whether the AML analysts were

1       seeing anything unusual or suspicious, wouldn't you need to  
2       know what they were seeing about the tens of millions of  
3       dollars in wires being sent out to Petters, Coleman, and  
4       White?

5       A.   In the aggregate, yes.

6       Q.   So how much?  When you did your review of all these  
7       documents, can you give us -- can you tell the jury a number  
8       as to the size, the amount of wires sent out through M&I  
9       Bank to these three insiders?  Can you tell us?

10           MR. SCHAPER:  Objection, asked and answered.

11           THE COURT:  Overruled.  You may answer if you can.

12           THE WITNESS:  Yeah, I can't answer.  I don't have  
13       that number.  I just don't know that number in my mind.

14       BY MR. ANTHONY:

15       Q.   Would it make a difference to your opinion whether it  
16       was a million dollars or \$80 million?

17       A.   Yes, to a degree, but not -- it would not be materially  
18       important.  My view is those wires and checks to the  
19       insiders were properly authorized.  They were at the  
20       instruction of account signers.

21           So that's my -- and then you're also asking a  
22       question about in the aggregate.  That's not how AML alerts  
23       occur or how they are analyzed, in the aggregate  
24       retrospectively.

25       Q.   I hear you, but you also said the history makes a

1 difference. So if the first analyst saw a wire for  
2 \$5 million to Petters, presumably that analyst would note it  
3 in the records so that any subsequent analyst could add on  
4 to that fact, right?

5 A. I don't agree with that. This is hindsight bias, if you  
6 will.

7 Q. You think it's hindsight bias for an analyst in 2006 to  
8 note that \$5 million was wired out to Deanna Munson, Deanna  
9 Coleman; that's hindsight bias?

10 A. I think it's hindsight bias today to look back and wish  
11 the AML analysts had asked that question or recorded that  
12 fact.

13 Q. Well, wasn't it the AML analyst's obligation to report  
14 suspicious or unusual activity?

15 A. Yes, and this is precisely the problem. Those  
16 transactions are not suspicious.

17 MR. ANTHONY: Your Honor, the answer was "Yes" and  
18 now he wants to go on and explain and do a narration, and I  
19 think that's improper. He can be redirected.

20 MR. SCHAPER: Your Honor, he was answering the  
21 question. It's a string of questions and he was explaining  
22 his answer, which I think is permissible.

23 MR. ANTHONY: I disagree, Your Honor.

24 THE COURT: The objection is overruled.

25 MR. SCHAPER: May the witness finish his answer?

1 THE WITNESS: Can you --

2 THE COURT: I believe he was finished.

3 THE WITNESS: -- repeat the question, please?

4 I'm sorry.

5 MR. ANTHONY: The question was: "Wasn't it the  
6 AML analyst's job to report suspicious or unusual activity?"  
7 I think that invites a "yes" or "no" answer, Your Honor.

8 THE COURT: You're correct.

9 MR. ANTHONY: And that's all I'm asking.

10 BY MR. ANTHONY:

11 Q. Can you answer it, sir? Yes or no.

12 A. Can you repeat it again, please? Again, I get lost in  
13 the back and forth. If you wouldn't, please, just repeat  
14 the question.

15 Q. Was it the AML analyst's job to report suspicious or  
16 unusual activity?

17 A. Yes. And my more complete answer, it was not suspicious  
18 or unusual.

19 THE COURT: Sir?

20 THE WITNESS: I'm sorry. I don't want to leave an  
21 inaccurate answer, so I'm struggling to give a "yes" or  
22 "no."

23 THE COURT: You need to answer the question that's  
24 asked.

25 THE WITNESS: Yes, ma'am.

1 BY MR. ANTHONY:

2 Q. So turn, if you will, in the same document, Exhibit 183,  
3 to page 81.

4 MR. ANTHONY: And highlight the top two boxes,  
5 please.

6 BY MR. ANTHONY:

7 Q. And you'll see that there were wires coming in for  
8 \$1.464 billion in September of 2007. And the same day for  
9 about -- in the next comment that wires went out for  
10 1.467 billion, correct?

11 A. Yes, for the month. Those are monthly totals, yes, sir.

12 Q. And you didn't think there was anything unusual about  
13 that type of activity, correct?

14 A. No, sir.

15 Q. Right. Because that's the type of activity that had  
16 been going on in this account from the very beginning,  
17 right?

18 A. Yes.

19 Q. So if PCI and Petters and Coleman -- let me rephrase  
20 that.

21 So if Mr. Petters was able to get past the first  
22 analyst with this type of activity, then he could rely on  
23 subsequent analysts looking at what happened with the first  
24 analyst and not have to worry about anybody suspecting this  
25 as being unusual activity, correct?

1 A. I don't know how to answer that.

2 Q. What I'm asking --

3 A. I don't know what Mr. Petters --

4 Q. What I'm asking is: If the first analyst makes a  
5 mistake, then everybody who follows what the first analyst  
6 did is making the same mistake, right?

7 A. That's not my view of what happened here.

8 Q. Okay. You were asked what the bank's policy was --

9 MR. ANTHONY: You can take that down, please,  
10 Ms. Ellig.

11 BY MR. ANTHONY:

12 Q. You were asked what the bank's policy was with respect  
13 to closing accounts. Do you recall being asked that  
14 question?

15 A. Yes, sir.

16 Q. I didn't hear an answer. What was the bank's policy on  
17 closing accounts where there was suspicious activity?

18 A. I believe in '04 the bank adopted a policy that provided  
19 for account closure when SARs were filed. And we see  
20 evidence in the record of the bank reporting account  
21 closures because of filed SARs in two thousand and -- it's  
22 either 2005 or 2006.

23 Q. So, as I understand the policy as you've described it,  
24 if the bank files a SAR, then the bank is required to close  
25 the customer's account?



1 A. I don't believe that's the policy.

2 Q. That's why I'm asking you.

3 A. Oh, I'm sorry.

4 Q. I can't find it anywhere. You said you read it and you  
5 knew it, so I'm just asking you what it is.

6 A. I see evidence of it at work. I see accounts being  
7 closed because of SARs.

8 Q. So you've never seen the bank's policy with respect to  
9 closing accounts for suspicious activity?

10 A. I just don't recall as I sit here.

11 Q. All right. But you have seen evidence that when the  
12 bank has filed SARs, that it has on occasion closed  
13 accounts, correct?

14 A. Yes, sir. I was looking this morning at a -- it was a  
15 2005 -- June 2005 document that reports six or seven  
16 customer accounts that are closed because of SAR filings, in  
17 response to a question from the fed.

18 Q. Okay. So I also want to follow up on your KYCC acronym.  
19 I thought that was a pretty good acronym. "Know your  
20 customer's customer," that's what it means, right?

21 A. Yes. I can't take credit for that.

22 Q. I don't know who did, but I like the acronym.

23 So we know what "know your customer" is. You're  
24 supposed to know the business the customer is in and things  
25 of that nature, correct?

1 MR. SCHAPER: Objection to form, vague.

2 THE COURT: Overruled. You may answer if you can.

3 THE WITNESS: I think there's a lot of  
4 disagreement about what fits inside KYC, but that is what  
5 the term means, "know your customer." It's just how it's  
6 interpreted is different.

7 BY MR. ANTHONY:

8 Q. And so "knowing your customer's customer," you say the  
9 bank doesn't really have to concern itself with knowing its  
10 customer's customer, that's my takeaway from your testimony.  
11 Is that accurate?

12 A. I tried not to be unclear about it. That's absolutely  
13 true.

14 Q. Okay. So, for example, if you were looking at your  
15 customer's activity -- which you are required to do under  
16 BSA, right?

17 A. Yes.

18 Q. Under the Bank Secrecy Act you have to look at what your  
19 customer is doing, right?

20 A. Yes.

21 Q. And if you know your customer is doing business and  
22 sending millions of dollars to a money launderer, don't you  
23 have to ask yourself the question why is our customer doing  
24 business with a money launderer?

25 A. You're actually not required to do that, but I could

1       imagine a banker asking that question if they were aware of  
2       it, of course.

3       Q.   Right.  It's common sense, isn't it?

4       A.   Again, if they are aware of it, of course.  I don't  
5       disagree with the reasonableness of asking that question,  
6       but it's not -- that happens not to be the requirement.

7       Q.   Right.  But we're not talking about a requirement just  
8       to meet a banking regulation.  We're talking about the  
9       bank's obligation to comply with the Bank Secrecy Act,  
10      correct?

11      A.   I'm unclear on the difference you're making.  But I --

12      Q.   Okay.  I'll make it clear for you.

13      A.   Okay.

14      Q.   The Bank Secrecy Act requires the bank to look for and  
15      report suspicious activity, correct?

16      A.   Yes, sir.

17      Q.   And whether it's complying with a federal rule or  
18      regulation, if you see your customer sending millions of  
19      dollars to a convicted money launderer, isn't that enough  
20      under common sense to report it to someone?

21               MR. SCHAPER:  Objection, assumes facts not in  
22      evidence.

23               THE COURT:  Overruled.  You may answer if you can.

24               THE WITNESS:  Again, the bank would have to have  
25      certain knowledge that the money -- in your example, the

1 money is going to a convicted money launderer.

2 BY MR. ANTHONY:

3 Q. Okay. Let's talk about what the bank's knowledge was.

4 Mr. Flynn, as you know, met with Frank Vennes, a  
5 convicted felon for money laundering, in 2001, correct?

6 Correct?

7 A. I thought it was 2002 in the MIContacts.

8 Q. So you are familiar with that?

9 A. Yes, I have seen that.

10 Q. Okay. And you're aware that Mr. Flynn became the  
11 business banker for PCI, correct?

12 A. I'm aware of that.

13 Q. And you will agree that from looking at the bank's wire  
14 transfer records, you could see millions -- hundreds of  
15 millions of dollars going from PCI to Frank Vennes's  
16 company, Metro Gem, correct?

17 MR. SCHAPER: Objection, misstates testimony.

18 THE COURT: Overruled.

19 THE WITNESS: Can you repeat the question, please?

20 BY MR. ANTHONY:

21 Q. Sure. You will agree that the bank had information in  
22 its wire transfer records which showed tens of millions, if  
23 not hundreds of millions, of dollars going from PCI to Frank  
24 Vennes's company, Metro Gem?

25 A. I'm not arguing. The bank clearly had information in

1 its records about the wire transfers to Metro Gem.

2 Q. Okay. So whether or not under some federal rule it  
3 needed to KYCC, wouldn't it have just been something that  
4 would have alerted Mr. Flynn to suspicious activity when he  
5 realized that his customer, PCI, was sending hundreds of  
6 millions of dollars to a convicted money launderer?

7 MR. SCHAPER: Objection, misstates the record.

8 THE COURT: Sustained.

9 BY MR. ANTHONY:

10 Q. Mr. Flynn knew Metro Gem and Frank Vennes from his  
11 conversations, correct?

12 A. My recollection of the MIContacts was --

13 MR. ANTHONY: Your Honor, he's going beyond. I  
14 just asked a "yes" or "no" question and he's going --  
15 launching into an explanation.

16 MR. SCHAPER: I don't believe that was -- oh, I'm  
17 sorry, Your Honor. I don't believe that that was really a  
18 "yes" or "no" question.

19 THE COURT: Please answer the question.

20 THE WITNESS: Yes, ma'am, Your Honor.

21 BY MR. ANTHONY:

22 Q. Did you see in the MIContacts where Mr. Flynn met with  
23 Mr. Vennes and where Mr. Vennes told him he owned Metro Gem,  
24 that Metro Gem was doing business with PCI?

25 A. I recall the MIContact. I don't recall Vennes owning

1 Metro Gem in that document as I sit here.

2 Q. Do you recall Mr. Vennes telling the bankers, Mr. Flynn,  
3 that he was involved with Metro Gem and Metro Gem was  
4 selling -- was doing business with PCI?

5 A. It was a marketing call -- again, if I can answer the  
6 question, as I recall, it was a marketing call where --

7 MR. ANTHONY: Your Honor, I asked it "yes" or "no"  
8 and he --

9 THE COURT: Please answer the question.

10 THE WITNESS: I guess I can't answer the question  
11 the way you've asked it.

12 BY MR. ANTHONY:

13 Q. In any event, you read the Metro -- the MIContacts with  
14 respect to the conversation between Mr. Vennes and  
15 Mr. Flynn, correct?

16 A. Yes.

17 Q. And you'll agree that whatever was said in that  
18 conversation and whatever is reported in that MIContact  
19 would be information in the possession of the bank, correct?

20 A. Yes.

21 Q. You asked -- you made reference to, I think it was,  
22 Plaintiff's Demonstrative 16. It was -- you described it as  
23 a bunch of red -- how did you describe it? A bunch of red  
24 poles or something? Do you remember how you described it,  
25 the alerts going off each month?

1 A. I don't recall, but I do recall the exhibit.

2 MR. ANTHONY: Let's put up PD-16, please, and make  
3 sure we're on the same page.

4 BY MR. ANTHONY:

5 Q. And you said there's nothing unusual or suspicious about  
6 an alert, an alarm going off every month for 39 months,  
7 correct?

8 A. I don't think I was asked that question.

9 Q. You -- well, do you think it's unusual for an alert, an  
10 alarm to go off every month for 39 months? That's my  
11 question. Do you think it's unusual? I think I've crafted  
12 it "yes" or "no."

13 A. No.

14 Q. You think it's not unusual?

15 A. That's correct.

16 Q. Okay. Now, you did say that once you're over the  
17 threshold, it doesn't matter what the score is, you did say  
18 that, right?

19 A. That's correct.

20 Q. Okay. So can you tell me why it is they provide you  
21 with a score?

22 A. I just don't understand the question.

23 Q. Okay.

24 A. Can you rephrase?

25 Q. If it doesn't matter what you have to do once it's over

1 the threshold, why would Searchspace give the analyst a  
2 score? Why wouldn't it just say you're over the threshold,  
3 if it doesn't matter?

4 A. Well, what matters is there's the threshold, right? So  
5 in this case 75 was the threshold, and anything above that  
6 is going to be examined by the analyst.

7 Q. Okay. So why is there a score for each alarm? Why  
8 don't they just say here's an alarm for X? Why do they keep  
9 publishing the totals if it doesn't matter?

10 A. Because it allows the bank to understand is it above or  
11 below -- if you change the threshold, is it above or below  
12 the threshold? So the threshold -- the bank can control the  
13 threshold. And so the score matters in the sense that it  
14 tells you the aggregate point total, but the bank is  
15 directing the threshold.

16 Q. So this -- these alarms are telling you that whatever is  
17 happening in this PCI account is way above the threshold,  
18 right?

19 A. Yeah, I don't dispute that the numbers are higher than  
20 the threshold. That's why they are alerts --

21 Q. Right.

22 A. -- they are above the threshold.

23 Q. And the numbers matter. Otherwise, the bank wouldn't be  
24 publishing them each month when they do these alerts, would  
25 they?



1 A. Right, but it's a tool the way your odometer is a tool  
2 or your speedometer is a tool, right? There's not meaning  
3 inherent in what the data says. It matters its relationship  
4 to the threshold.

5 Q. Okay. So let's take that analogy you're using. It  
6 seems to me that there's a big difference between going 70  
7 in a 60 mile an hour zone than 140 in a 60 mile an hour  
8 zone. Is that what you are saying, it's no different?

9 A. I think it would depend on what the speed limit is in  
10 this analogy, so --

11 Q. The speed limit is 60. Big difference between going 70  
12 and going 240, isn't it?

13 A. It matters what the limit is, right? It matters what  
14 the threshold is.

15 Q. Okay. So if you are the AML analyst and you are looking  
16 at this for the first time and you see you're up at 287, do  
17 you need to be a little more concerned than the analyst who  
18 saw it at 159?

19 A. Not in my view and not in my experience working with  
20 Searchspace.

21 Q. No. Because you still have to do the same detailed  
22 investigation, don't you?

23 A. The system is kind of agnostic as to the score. The  
24 score is not what drives the depth or the quality of the  
25 analysis. It's the relationship to the threshold.

Q. Okay. So --

THE COURT: Counsel, as you're about to move to a different topic --

MR. ANTHONY: I am.

THE COURT: -- it's a good time for us to take our midafternoon break.

MR. ANTHONY: Okay.

THE COURT: Members of the Jury, please continue to abide by the instructions that I have given you. We'll take a 15-minute break. Please be ready to return to the courtroom at 3:20. Okay?

THE LAW CLERK: All rise for the jury.

**IN OPEN COURT**

**(JURY NOT PRESENT)**

THE COURT: We will plan to resume testimony at 3:20.

(Recess taken at 3:04 p.m.)

\* \* \* \* \*

(3:27 p.m.)

**IN OPEN COURT**

**(JURY PRESENT)**

THE COURT: You may be seated.

You may proceed, Counsel.

MR. ANTHONY: Thank you, Your Honor.

BY MR. ANTHONY:

1 Q. Mr. Grice, I wrote down when you said that there was an  
2 emphasis from the regulators telling the banks to slow down  
3 with respect to filing preemptive kind of SARs. Do you  
4 remember that testimony?

5 A. Yes, sir.

6 Q. Okay. And you said the regulators were saying tell the  
7 bank slow down, do your job, investigate, do your job, don't  
8 do any preemptive SARs. That's what you said, right?

9 A. That's correct.

10 Q. And so remember we saw --

11 MR. ANTHONY: Pull up Exhibit 183, please.

12 BY MR. ANTHONY:

13 Q. We saw how, in the very beginning, there was an alert  
14 that referred to Petters being a collection of 20 companies.  
15 Do you see that?

16 A. I recall that, yes.

17 Q. Do you remember that?

18 A. Yes, sir.

19 Q. I think it was on page 9.

20 And I think you said that you thought the analysts  
21 at M&I were pretty careful in the work they did, right?

22 A. I don't recall testifying about the care of the  
23 analysts. I have that opinion. I just don't think --

24 Q. Okay.

25 A. -- we spoke to that earlier.

1 Q. So we saw the first one. This is dated in '05, and I'm  
2 just going to make a note of that.

3 MR. ANTHONY: And then would you turn, Ms. Ellig,  
4 please, to page 27. And in the middle, at that 3-22-06,  
5 highlight it where it says, "Petters Company is a collection  
6 of nearly" -- "Petters Company, Inc. is a collection of  
7 nearly 20 companies."

8 BY MR. ANTHONY:

9 Q. So this is not quite a year later. The analysts are  
10 being told to take their time, investigate, do their jobs.  
11 They are still reporting in '06, just as they reported in  
12 '05, that Petters Company, Inc. was a collection of nearly  
13 20 companies, correct?

14 A. Correct. It's the same general explanation.

15 Q. Right. Just following the history, right?

16 A. The history is shaping this analysis, yes.

17 Q. Okay. So now let's go to page 37. And the item at the  
18 bottom, this is an alert for 6-6-2006 and once again the  
19 analysts are reporting that, "PCI is a collection of nearly  
20 20 companies."

21 This is -- you know, this is the history they see  
22 in these alerts, right?

23 A. This is part of it, yes.

24 Q. Yeah. So then let's look at page 43 of Exhibit 183.

25 This is August. The one on the bottom, "Petters Company,

1 Inc. is a" -- and we go over to the top -- "collection of 19  
2 companies" now. I read that accurately, didn't I?

3 A. That part, yes.

4 Q. Okay. And then let's look at page number 49 of  
5 Exhibit 183. This is October of '06. And at the bottom,  
6 now Petters is being described as "a collection of companies  
7 that make and market a variety of consumer products  
8 worldwide. Office locations are in South America, Asia, UK,  
9 and six locations in the U.S.A. The Minneapolis location  
10 uses account 9018."

11 Now, the facts in the record in this case show  
12 that PCI was not a collection of worldwide companies,  
13 correct?

14 A. That's correct.

15 Q. So you said you thought the analysts were being careful  
16 in the way they analyzed the alerts relating to Petters  
17 Company, Inc.

18 Would you agree that it -- at least for the first  
19 18 months we've looked at, they still couldn't get the name  
20 and business of Petters Company, Inc. accurate?

21 A. I agree that that's an inaccuracy.

22 Q. Does it suggest to you a kind of laziness or sloppiness?

23 A. No.

24 Q. No?

25 A. No. It's an inaccuracy. I acknowledge it's an

Office - Cross

1       inaccuracy.

2       Q.   All right.  And maybe it's just they were relying on the  
3       alerts that went before the one they were looking at, right?

4       A.   I mean, history plays a role.  I said these were  
5       additive.  I acknowledged if there's an inaccuracy earlier,  
6       that could follow down the chain.  So I agree it's an  
7       inaccuracy.

8       Q.   So let's put up Exhibit 57, please, and what I'd like  
9       you to do is look at -- this is a document already in  
10      evidence that the jury will be able to see in the jury room.  
11      It's Exhibit 57, and it's a list of checks -- it's a bunch  
12      of checks.

13                 MR. ANTHONY:  So I'd like you to go, Ms. Ellig, to  
14      page 15, please, and enlarge that.

15      BY MR. ANTHONY:

16      Q.   And that's a million dollars to Bob White.  Now I'd like  
17      you to go to 42.  And this is Deanna Munson.  This is a  
18      million dollars in January of '05.

19                 And this is before Searchspace came into  
20      existence, right?

21      A.   Yes, sir.

22      Q.   But this check would have been available to whoever was  
23      looking at whatever alerts were going off with respect to  
24      the Petters Company, this would have been available to  
25      whoever -- whatever analyst was looking at any alerts that

1 were occurring, correct?

2 A. That's my understanding.

3 Q. So let's look at 71. Okay. This is an alert -- not an  
4 alert. It's a check for million dollars for Mr. Wehmhoff,  
5 December 27th, 2005.

6 Now, that was after Searchspace had been  
7 implemented, correct?

8 A. Yes, sir.

9 Q. Now, would you not expect this check to show up in one  
10 of the alerts that we've seen in Exhibit 183, just like the  
11 check for Disney tickets would show up?

12 A. No, sir.

13 Q. Okay. And let's look at 75, page 75 of Exhibit 57.  
14 This is another one to Wehmhoff for a million dollars.

15 MR. ANTHONY: And let's look at these three  
16 together, 75, 76, 77, please.

17 BY MR. ANTHONY:

18 Q. Okay. So we see three checks. Wehmhoff is getting a  
19 million, Ms. Munson is getting a million, and she's getting  
20 a -- it looks like she's getting 2 million, or is that  
21 1 million?

22 MR. SCHAPER: Your Honor, I believe two of those  
23 are the same checks, just for the record.

24 MR. ANTHONY: Oh, she can only put two up at once.  
25 I'm sorry.

1 BY MR. ANTHONY:

2 Q. So the point I want to make with you, sir, is: None of  
3 these checks show up in any of the AML analyst alerts, do  
4 they?

5 A. I don't believe they do.

6 Q. Now, I want to ask you about -- what I heard you say was  
7 nobody was talking about Ponzi schemes before the Petters  
8 thing basically blew up. Is that a fair characterization of  
9 what you said?

10 A. I think I said something about top of mind.

11 Q. Yeah.

12 A. It was not a priority.

13 Q. Yeah, that was your words. I remember I wrote it down,  
14 "top of mind."

15 It was not on anybody -- on the top of anybody's  
16 mind until Petters hit the airwaves, right?

17 A. Well, I guess I would say until really Madoff hit the  
18 airwaves, but Petters preceded Madoff by a couple of months.

19 MR. ANTHONY: Would you put up Exhibit 239,  
20 please, Ms. Ellig, and highlight the top so we can all see  
21 what it is, please.

22 BY MR. ANTHONY:

23 Q. And this is "Marshall & Ilsley" -- that's M&I Bank,  
24 right?

25 A. Correct.



1 Q. -- "Anti-Money Laundering Committee Meeting Minutes  
2 November 4, 2004." Do you see that?

3 A. Yes, sir.

4 Q. And you mentioned -- who was the woman you mentioned  
5 that was a similar position you thought you had one time?  
6 Kelley Maltsch, she's on here, right?

7 A. Yes, sir. You asked her about this yesterday, I  
8 believe.

9 MR. ANTHONY: Would you turn to -- Ms. Ellig,  
10 would you pull up -- under paragraph number 1, it would be  
11 the second bullet point, beginning with the word "despite."

12 BY MR. ANTHONY:

13 Q. So whether it was top of mind in the industry, would you  
14 agree that it was on somebody's mind -- I mean, a Ponzi  
15 scheme was on somebody's mind at M&I Bank in November of  
16 2004?

17 A. Can you just repeat the last part of the question,  
18 please?

19 Q. Sure. Would you agree that whether it was top of mind  
20 for the industry or not, that on November 4, 2004 it was in  
21 the minds of the people who were at this meeting at M&I Bank  
22 that they should be thinking about Ponzi schemes?

23 A. Ponzi schemes are certainly part of this, so I agree.  
24 So this event happened before Petters and Madoff, I agree.

25 Q. Right. So it would be fair to say that at least at M&I

1 Bank, the people like Kelley Maltsch and all these other  
2 people were talking about Ponzi schemes?

3 A. In this instance, yes --

4 Q. Okay.

5 A. -- I agree.

6 Q. And I think this memo basically says -- they are talking  
7 about Ponzi schemes in connection with anti-money laundering  
8 activity, right?

9 A. Yes, sir.

10 Q. So would it be fair to say this is an alert to the  
11 anti-money laundering people at the bank to be alert to  
12 Ponzi schemes?

13 A. Yes. And the requirement is you have knowledge. These  
14 are employees who have knowledge of a Ponzi scheme. I  
15 recall the facts of this case. There were people joking  
16 openly among the AML unit at AmSouth about this scheme. So  
17 they had knowledge, they were aware of it, and they were  
18 also aware of their choice not to report it.

19 Q. Right. So who was it that was joking about a Ponzi  
20 scheme?

21 A. The AML analysts at AmSouth Bank.

22 Q. Okay. So this is a discussion at M&I Bank about AML  
23 analysts at another bank that were not taking seriously  
24 suspicious activity that ultimately resulted in a Ponzi  
25 scheme being uncovered, right?

1 A. I'm just having a hard time following the language of  
2 your question. If you could repeat it, please?

3 Q. The -- I'm just trying to pin down what was funny about  
4 the Ponzi scheme. And are you saying that the people at M&I  
5 Bank were commenting on the people at this AmSouth Bank of  
6 Birmingham who were laughing about a Ponzi scheme?

7 A. No, no. I want to be really clear. The news reports at  
8 the time put out by FinCEN, the Treasury Department, were  
9 that AmSouth employees were openly joking about this Ponzi  
10 scheme that they had evidence of. So they had awareness and  
11 knowledge, and their supervisors chose not to report it.

12 Q. Okay. So back to that point, which is this alerted --  
13 by "this" I mean Exhibit 239 -- alerted the people on the  
14 Anti-Money Laundering Committee that they needed to take  
15 Ponzi schemes seriously, right?

16 A. In the context of a situation like this. Do you have  
17 awareness and knowledge of a Ponzi scheme? And if you do,  
18 take it seriously.

19 Q. Right. And also, whether you have awareness or not, you  
20 have to ask questions to educate yourself as to what your  
21 customer is doing with the funds going through the bank,  
22 right?

23 A. I guess I don't follow you that far. I follow you --

24 Q. Okay. Let me rephrase, then.

25 A. Okay.

1 Q. Would you agree with me that if you want to take Ponzi  
2 schemes seriously, you have to educate yourself about what's  
3 happening with your customer at the bank, correct?

4 A. Sure.

5 Q. Okay. Okay. I want to touch on the Federal Reserve --  
6 your comments about the Federal Reserve, and I'm not going  
7 to take a lot of time on that, but what I want to ask you is  
8 this: I read all the Federal Reserve documents that you  
9 referred to, and I didn't see PCI's name or Tom Petters'  
10 name mentioned in any of those Federal Reserve documents.  
11 Did you?

12 A. No.

13 Q. And I assume you didn't have access to the Federal  
14 Reserve work papers for any review they did of M&I's  
15 policies or procedures, did you?

16 A. I did not.

17 Q. And you would say -- I think it would be fair to say  
18 that if you don't have access to those work papers, that it  
19 would be difficult to opine on what the fed actually looked  
20 at or didn't look at, correct?

21 A. I know what was provided to the fed examiners. I don't  
22 know what they actually reviewed or did --

23 Q. Okay.

24 A. -- in their exam.

25 Q. I know you testified that you thought the bank's BSA

1 program was adequate and consistent, right --

2 A. Yes, sir.

3 Q. -- with industry practice?

4 A. And fed requirements and expectations.

5 Q. I also know you said you're a fisherman. My question is  
6 more -- is also sports related. Do you follow football at  
7 all?

8 A. Not in the slightest, so I beg your pardon.

9 Q. Would you agree that you could have a really good  
10 program -- in football it would be an offense -- you could  
11 have a really good program, but it still depends on the  
12 execution of the program for its success?

13 A. Certainly I follow that.

14 Q. Okay. So the fact that the bank had a program that was  
15 adequate or satisfactory still depends on the people  
16 executing the program for it to be a success, correct?

17 A. Sure, I agree with that.

18 Q. You know, you testified about another case that you had.  
19 I think you called it the *Stern* case?

20 A. Yes, sir.

21 Q. And you were an expert in that case, were you?

22 A. Yes, sir. I filed an affidavit.

23 Q. All right. And in that case you said that the bank  
24 should have known about the Ponzi scheme, correct?

25 A. I think I phrased it --

1 MR. SCHAPER: Objection to form of the question.

2 THE COURT: Overruled.

3 THE WITNESS: Can you repeat the question, please?

4 BY MR. ANTHONY:

5 Q. Sure. Did you provide an affidavit in that case?

6 A. I did, yes.

7 Q. And did you say in your affidavit that the bank knew or  
8 should have known about the Ponzi scheme?

9 A. Something to the effect of they in all likelihood could  
10 have known. I just don't recall the exact language, but  
11 they would have had access to this data.

12 Q. And you said that you came to that conclusion because  
13 the bank in that case provided extraordinary assistance to  
14 the Ponzi scheme. Do you recall saying that?

15 A. I do recall saying that.

16 Q. And you said the bank assisted the fraudsters in key  
17 ways that enabled the Ponzi scheme, correct?

18 A. I don't have it in front of me. If you can show it to  
19 me, I'll verify that I said that. I was speaking about a  
20 really complicated set of transactions and a complicated  
21 relationship.

22 Q. I will show it to you, if you'd like me to do that, if  
23 it will refresh your recollection.

24 A. That would be helpful. Thank you.

25 Q. Okay. Do you have -- I'm being told it's in your

1 binder, and I'm going to give you the location for it  
2 shortly.

3 A. Great.

4 Q. It's P-607.

5 (Pause)

6 Q. Do you have it?

7 A. I do, yes, sir.

8 Q. And take a look at -- do you recall providing -- an  
9 affidavit is something you do under oath, right?

10 A. Yes, sir.

11 Q. And was it your view at the time you did this affidavit  
12 that during the period 2005 to 2007 time period banks had an  
13 obligation to protect the public from Ponzi schemes?

14 A. Can you direct me to where you are?

15 Q. Look at page 5 of P-607, please. It's at paragraph 9,  
16 if you just want to look at paragraph 9 to refresh your  
17 recollection.

18 A. Yes, sir, I see that.

19 Q. Okay. So do you see that you said that the banks have  
20 an obligation to protect the public from Ponzi schemes?

21 A. Yes, sir. I don't see the reference to years that you  
22 made in your question, but I make that statement about banks  
23 have a public policy obligation.

24 Q. Okay. And in that case you also indicated that the  
25 bank, in that case where you provided the affidavit, was

1       aware of, you said, anomalous and irregular transactions  
2       flowing through the account. Do you recall that?

3       A. I do, yes.

4       Q. And you also said that one of the reasons why the bank  
5       should have suspected the activity was the fraudsters wrote  
6       and cashed several large round dollar checks payable to  
7       cash. Do you recall that?

8       A. I do.

9       Q. And do you recall how much money were involved -- was  
10      involved in those large round dollar checks?

11      A. I think I recall \$28,500 in a three-month period.

12      Q. So the fraudsters in that case, in which you opined that  
13      it was a Ponzi scheme and the bank should have been aware of  
14      it, wrote checks for \$28,000 or so, correct?

15      A. Yes, recognizing this is a personal account and not a  
16      business account and it was taken out in cash.

17      Q. You're aware that there were checks made out to cash in  
18      the PCI account during the period in question, correct?

19      A. I am.

20      Q. Do you recall how many hundreds of thousands or millions  
21      of dollars in checks were made out to cash in the PCI  
22      account?

23      A. I recall the testimony from Mr. Martens and I recall one  
24      of the last exhibits he showed was a list of dollar amounts  
25      payable to Ms. Coleman, Mr. Petters, Mr. White, and others.



1 I recall in his testimony him saying these were checks -- it  
2 was either actual cash or checks payable to cash.

3 Q. Right.

4 A. I don't think that was accurate.

5 Q. Okay. Well --

6 A. I think the checks were payable to Mr. White,  
7 Mr. Petters, Ms. Coleman, the other Coleman, but they  
8 weren't payable to cash.

9 Q. So my question was: Are you aware of checks payable to  
10 cash?

11 A. Yes, and I think the dollar total was \$1,500 or  
12 something like this. It was a modest dollar amount.

13 Q. Let me ask you this. You said -- and this is the last  
14 question on your affidavit there. You said in that  
15 affidavit that the withdrawals of cash in round dollars and  
16 in the amounts in that case would cause a bank  
17 investigations unit to open a case in order to investigate  
18 the sources and uses of the funds and to determine if there  
19 was a financial crime, such as money laundering. That's  
20 what you said, right?

21 A. Yes.

22 Q. And in that case that you provided the affidavit, the  
23 withdrawals totaled, I think you're right, \$25,800 in a  
24 90-day period, correct?

25 A. That's my recollection. That's what I say in the

1 affidavit.

2 Q. You heard testimony in this case about this expedited  
3 review called QAPOR, correct?

4 A. Correct.

5 Q. And you and Ms. Ghiglieri diverge in your opinion. She  
6 thinks QAPOR was an expedited review that resulted in less  
7 fulsome investigations than you believe occurred, correct?

8 A. I -- yeah, I disagree with her, yes, sir.

9 Q. Okay.

10 MR. ANTHONY: Now, Ms. Ellig, would you put up  
11 Exhibit 398, page 7, please.

12 BY MR. ANTHONY:

13 Q. And we looked at this briefly earlier, but I didn't ask  
14 you about the last point on paragraph 3. These were  
15 reminders. I asked you about the first two bullet points:  
16 Where do the funds come from? Where do they go?

17 But in the final analysis, what the person writing  
18 the comment in Exhibit 183, the alerts, what they have to  
19 achieve is sufficient description to convince the reader  
20 that the alert is not suspicious, correct?

21 A. That's what it says, yes.

22 Q. Right. And so you used the phrase earlier it's not what  
23 you believe or what I believe, right, it's -- in terms of  
24 these alerts, it's whoever is reading it has to be  
25 persuaded, convinced that whatever is being shown in that

1 comment section is not suspicious, correct?

2 A. I don't follow the question.

3 Q. You're right. It's bad --

4 A. The instruction is to the AML analysts.

5 Q. Right. So whoever is reading the comment has to be  
6 convinced that the alert is not suspicious, correct?

7 A. I agree that's what the instruction is, but I also, when  
8 I testified to this earlier in my direct, was making it  
9 clear that this is an instruction inside the context of the  
10 AML unit. So it's between the AML analyst and their  
11 supervisor.

12 Q. You know --

13 A. It's not for -- it wasn't intended for litigation  
14 15 years later, is my point.

15 Q. Okay. So I'm going to switch to a different topic.

16 MR. ANTHONY: You can take that down, Ms. Ellig.

17 BY MR. ANTHONY:

18 Q. You talked about a hypothetical transaction in response  
19 to direct questions. Do you remember that? Money coming  
20 from big-box retailers, maybe it went to the wholesalers and  
21 then went to the PCI account. Do you remember that?

22 A. Are you referencing the diagram that we looked at?

23 Q. Yeah, yeah.

24 A. Yes, sir.

25 Q. Do you remember that?

1 A. I do recall that.

2 Q. Okay. So can you show us anywhere in any of the alerts  
3 where any of these analysts thought the money that was going  
4 into the PCI account that said Enchanted or Nationwide was  
5 really coming from some big-box retailers and working its  
6 way through Enchanted and Nationwide and going into PCI? Do  
7 you see that mentioned anywhere in any of those alerts?

8 A. No, sir.

9 Q. Did you hear anyone testify that they thought, whether  
10 it be an analyst, a business banker, or business banker's  
11 boss, any of them testify that they thought the money was  
12 coming from the big-box retailers through the wholesalers  
13 and into the PCI account? Did you see any testimony like  
14 that?

15 A. No, sir, nor do I think it should have been.

16 Q. I'm going to finish with two things. And I saw -- you  
17 know, you did that red flag comparison between you and  
18 Ms. Ghiglieri. Do you remember that?

19 A. I think counsel for the bank did, but I was --

20 Q. Yeah.

21 A. -- part of that back and forth.

22 Q. Yeah. So I'm going to do something similar to what they  
23 did.

24 MR. ANTHONY: Let's do the ELMO.

25 BY MR. ANTHONY:

1 Q. So Ms. Ghiglieri testified that she thought that the  
2 flow of funds were going the wrong way. Do you remember  
3 that?

4 A. I do.

5 Q. And she said the business purpose -- if you were  
6 following the business purpose as explained to the business  
7 bankers, the money shouldn't have been coming from the  
8 wholesalers, it should have been going to the wholesalers.  
9 Do you remember that?

10 A. That was her testimony.

11 Q. And she said that was suspicious, didn't she?

12 A. Yes.

13 Q. So I'm going to put a little "X" there. Do you think  
14 that was suspicious?

15 A. At the time, no.

16 Q. Okay. Now, Ms. Ghiglieri said she thought that the  
17 monthly alerts that we saw with all the thresholds and the  
18 numbers, she said that suggested to her that there was  
19 suspicious activity. Do you recall that?

20 A. I do.

21 Q. And I think we said there were 39 of them, right?

22 A. Correct.

23 Q. She said they were suspicious. And you say they are or  
24 aren't?

25 A. Well, I mean, I'm -- I think you asked me -- none of

1       them said they were suspicious --

2       Q.   Okay.

3       A.   -- so I'm just reporting that's what the conclusions  
4       were.

5       Q.   Well, I'm asking you if in your opinion you thought they  
6       were suspicious, not whether they were reported as not being  
7       suspicious.

8       A.   I was misunderstanding your question.  I agree that  
9       there was -- those were properly adjudicated, to use their  
10      word.  Those were correct decisions based on what was  
11      available at the time.

12      Q.   My question is:  Do you -- is it your opinion that those  
13      39 alerts going off is an indication of suspicious activity  
14      or not?

15      A.   No.  I agree with the determinations made by the  
16      analysts.

17      Q.   Okay.  Then Ms. Ghiglieri talked about billions going in  
18      and out of the account.  Do you remember that?

19      A.   I do.

20      Q.   She thought that was suspicious.  Do you think that's  
21      suspicious?

22      A.   Based on what was known at the time, no.

23      Q.   Then Ms. Ghiglieri said there were large round dollar  
24      transactions and she thought that was suspicious.  Do you  
25      think that's suspicious?

1 A. Again, same answer. Based on what was known at the time  
2 and consistent with fed expectations and industry custom and  
3 practice, no.

4 Q. And then she said wires, millions of dollars, going to  
5 insiders in her view were suspicious. Do you agree that  
6 that information is a cause for suspicion?

7 A. No. Based on what was known at the time, those were  
8 properly authorized and not suspicious.

9 Q. Well, in other words, what you say is one corporate  
10 insider authorized another corporate insider to receive a  
11 multimillion dollar wire, correct?

12 A. Correct. I agree, that's a correct description of what  
13 those were.

14 Q. And so you had those corporate insiders taking the  
15 company's money -- and the company is the plaintiff in this  
16 case -- taking the company's money for themselves and you  
17 didn't think that was suspicious?

18 A. I think, based on what was known at the time, that was  
19 the proper determination by the AML analysts.

20 Q. And Ms. Ghiglieri talked about checks in the millions as  
21 being suspicious. And is it your view that they weren't  
22 suspicious?

23 A. I have to take your word for it. I can't see what you  
24 are writing.

25 Q. Oh, I'm sorry. I apologize.

1 A. I again agree that the -- in my view, the checks were  
2 not suspicious or irregular or warranted an investigation.

3 Q. And Ms. Ghiglieri referenced PCI doing business with a  
4 money launderer as being a cause -- a reason for suspecting  
5 something. And I'm not sure what your view of that is. Do  
6 you think that is a reason for concern or not, the bank  
7 should have had a concern over that or not?

8 A. I think the bank should not have had a concern based on  
9 what was known at the time.

10 Q. Okay.

11 A. She's --

12 Q. Thank you.

13 A. -- improperly ascribing risk where none was known.

14 Q. So her view that -- if the customer is doing business  
15 with a known money launderer where hundreds of millions of  
16 dollars are being exchanged, are you saying that that was an  
17 unreasonable view of what risk is?

18 MR. SCHAPER: Objection, misstates the testimony.

19 THE WITNESS: I'm saying --

20 THE COURT: Overruled.

21 BY MR. ANTHONY:

22 Q. Are you saying her view is unreasonable?

23 A. I'm saying this is a reflection of hindsight bias. She  
24 knows about the marketing MIcontract call in 2002 and is  
25 ascribing that knowledge to all subsequent transactions with



1 Metro Gem, and the only way she knows to look for that and  
2 ascribe that significant weight to that MIcontract is by  
3 virtue of the Martens report after 2010.

4 Q. Well, in fact, every wire transfer to Metro Gem from  
5 2002 to 2008 was information in the bank's data and records,  
6 wasn't it? Wasn't it in the bank's data and records?  
7 That's my only question.

8 A. The MIcontract is inside the bank's data and records.

9 Q. The Micontracts in the records and all the transactions  
10 between the money launderer and PCI are in the bank's  
11 records for anybody to see from 2002 to 2008. Isn't that an  
12 accurate statement?

13 MR. SCHAPER: Your Honor, that mischaracterizes  
14 the evidence as to there being any transactions between  
15 Mr. Vennes and the bank.

16 MR. ANTHONY: Metro Gem, Your Honor.

17 THE COURT: So you're correcting your question?

18 MR. ANTHONY: Yes, it's between Metro Gem.

19 BY MR. ANTHONY:

20 Q. Any transaction between Metro Gem and PCI was available  
21 to each and every person in the bank who wanted to look for  
22 it, correct?

23 A. Correct. I agree with that.

24 Q. All right. But that wasn't a sign of any concern or  
25 suspicious behavior in your view?

1 A. Prior to the PwC work, it was not known.

2 Q. Well --

3 A. The suspicious nature of those transactions was not  
4 known.

5 Q. So you don't take at face value doing business with a  
6 money launderer is suggestive of anything suspicious,  
7 correct?

8 MR. SCHAPER: Objection again, mischaracterizes  
9 the record; same basis.

10 THE COURT: Overruled.

11 THE WITNESS: Could you repeat the question,  
12 please?

13 BY MR. ANTHONY:

14 Q. You don't think it's inherently suspicious when your  
15 customer is doing business with a money launderer?

16 A. You -- my -- I can't answer a simple "yes" or "no" the  
17 way you've put the question.

18 Q. Okay. I'll ask a different question.

19 Now, we saw Ms. Ghiglieri talking about unusual  
20 requests -- I'm not sure how to spell it -- unusual  
21 requests. She thought the requests to write a letter to  
22 Polaroid, the request not to get the list of transactions,  
23 the request to write a letter in connection with the DACAs  
24 to Sabes, she thought that was all special requests that  
25 were unusual. Do you remember that?

1 A. I do.

2 Q. You don't think any of that was unusual, do you?

3 A. No. Based on what was known and available at the time,  
4 no.

5 Q. All right. And the last one I'm going to put up is the  
6 yacht.

7 (Plaintiff's counsel confer)

8 BY MR. ANTHONY:

9 Q. All right. I'm going to push the paper up. 10 million  
10 for the yacht, she said she thought it was suspicious. I  
11 think you testified already you didn't attach any  
12 significance or concern or suspicion to that, right?

13 A. When we talked about the yacht or the transaction with  
14 the yacht/broker/law firm, we were talking about the AML  
15 analysts calling out that information. I was happy they  
16 called out that information.

17 But as I think you may have asked Ms. Maltsch  
18 yesterday, wealthy people buy yachts. So I don't think  
19 there's anything inherently improper or suspicious about a  
20 transaction involving a yacht --

21 Q. Okay.

22 A. -- if that's what this was.

23 Q. So where did you see in the alert comment what the  
24 business use or purpose for PCI owning a yacht?

25 A. I did not see because that wasn't the standard.

1 Q. Well, you did not see it because no one wrote it in the  
2 comment section, that's why you didn't see it, isn't it?

3 A. I don't know --

4 MR. SCHAPER: Objection, Your Honor,  
5 argumentative.

6 MR. ANTHONY: I'll withdraw it, Your Honor.

7 BY MR. ANTHONY:

8 Q. In any event, to sum it up, you didn't think it was  
9 suspicious at all?

10 A. On its face, knowing what was known at the time or based  
11 on information available at the time, no.

12 Q. Okay. The last area I want to ask you about is --

13 MR. ANTHONY: Oh, no, you can take it down,  
14 please. Oh, it's me. I'm sorry. I'm taking it down.

15 BY MR. ANTHONY:

16 Q. Okay. You answered in questions to counsel that, you  
17 know, you had all the information you needed to do your  
18 report, correct?

19 A. Yes, sir.

20 Q. All right. And were you here for Mr. Vanderheyden's  
21 testimony regarding the unique information on the millions  
22 of pages of documents in evidence and e-mails that were  
23 destroyed? Were you here for that testimony?

24 MR. SCHAPER: Objection, misstates testimony.

25 THE WITNESS: I heard half and I saw half --

1 MR. ANTHONY: Wait. Wait.

2 THE WITNESS: Oh, sorry.

3 THE COURT: Sustained.

4 BY MR. ANTHONY:

5 Q. Did you read his transcript yet?

6 A. I heard half of it and I read half of it.

7 Q. Did you read the part -- and I'll read it to you, the  
8 question he was asked, and I'll give you his answer and see  
9 if this is what you remember.

10 "And you can't say, Mr. Vanderheyden, for a fact that  
11 there was not unique information on all those millions of  
12 pages of documents that were destroyed from those backup  
13 tapes in 2010 and 2011, right?

14 "Answer: I cannot say that for --

15 "Question: You can't. So what we can say is there that  
16 could have been unique information on all of those millions  
17 of pages of evidence and e-mails that were destroyed, right?

18 "Answer: Could have been."

19 Do you recall him saying those things?

20 A. I do, yes, sir.

21 Q. Okay. And would it be fair to say that, as far as you  
22 know, neither you nor anybody else here has had access to  
23 those millions of pages of documents in evidence, correct?

24 MR. SCHAPER: Objection to form, misstates the  
25 record.

1 THE COURT: Sustained.

2 BY MR. ANTHONY:

3 Q. You haven't had access to those missing pages or  
4 records, are you?

5 A. Yeah, I have not been involved in that --

6 Q. All right.

7 A. -- question or issue at all.

8 Q. And you don't know anything about it?

9 A. Only what I heard here in the courtroom.

10 Q. Yes.

11 MR. ANTHONY: Nothing further at this time,  
12 Your Honor.

13 MR. SCHAPER: Just a few questions, Your Honor.

14 **REDIRECT EXAMINATION**

15 BY MR. SCHAPER:

16 Q. Mr. Grice, I think you testified earlier that the record  
17 that you were able to review in this case was one of the  
18 largest records that you have reviewed in any matter you  
19 have worked on?

20 A. That's correct.

21 Q. And are you confident that you had sufficient  
22 information to reach your conclusions?

23 A. I think I said more than sufficient, yes.

24 Q. Okay. And if M&I employees had been participating in  
25 some kind of fraudulent scheme, would you expect evidence of

1 their involvement to be limited to e-mails?

2 A. Yes, sir. Oh, I'm sorry, I misheard the question. Can  
3 you repeat it again?

4 Q. Yeah. If M&I employees had been participating in the  
5 PCI scheme, would you expect evidence of their involvement  
6 to be limited to e-mails?

7 A. No. There would be action associated to that. There  
8 would be something else.

9 Q. And is that view based on your experience working on  
10 other cases where employees at a bank were involved in some  
11 wrongdoing?

12 A. Yes.

13 Q. You were asked by plaintiff's counsel about the fact  
14 that you had not interviewed any bank employees in  
15 connection with your work.

16 A. Yes, sir.

17 Q. Why did you not do that?

18 A. Because I had so many deposition transcripts where  
19 counsel was provided the opportunity to interview and  
20 examine bank witnesses repeatedly. So I didn't feel it was  
21 necessary in this assignment.

22 Q. Did you say that you looked at over 60 deposition  
23 transcripts?

24 A. Yes, sir.

25 Q. And just ballpark, roughly how long do deposition

1 transcripts in this case typically run?

2 A. Hundreds of pages each, plus the exhibits. So, you  
3 know, they're usually five, six, seven hundred pages, unless  
4 I'm talking, in which case it might be more, but a large  
5 selection of exhibits that are attached to it.

6 Q. And you reviewed 60 of those?

7 A. Yes, sir.

8 Q. So did you feel that you had the information you needed  
9 to render your opinions?

10 A. Yes, sir, especially because there were multiple  
11 transcripts for the bank witnesses. So I got to see or hear  
12 or read several opportunities to examine Ed Jambor, Chris  
13 Flynn, and other bank analysts and AML employees.

14 MR. SCHAPER: Can we please look at P-183,  
15 Mr. Herzka, and go to pages 9 and 10.

16 BY MR. SCHAPER:

17 Q. Do you remember being asked about this alert, Mr. Grice?

18 A. Yes, sir.

19 Q. And there is an entry, if we look down on the bottom of  
20 the first page, "Petters is a collection of nearly 20  
21 companies." Do you see that?

22 A. I do.

23 Q. And you were asked several questions about that?

24 A. Yes, sir.

25 Q. And I think you started to say that the distinction



1       between whether that is technically accurate as to PCI did  
2       not matter -- or was not important to you from an AML  
3       perspective. Did I hear that right?

4       A. That's correct.

5       Q. I don't think plaintiff's counsel asked you a follow-up  
6       question, so I'd like to ask you: Why did you say that?

7       A. This inaccurate but broader definition of the customer  
8       reflects -- again, my word -- effective control that  
9       Mr. Petters had over PCI.

10               And so I don't think it's a meaningful distinction  
11       whether or not Mr. Petters or PCI is described this way. I  
12       think what matters is that Petters is at the center of  
13       Petters Group Worldwide, PCI, and the related companies.

14               And so I think from the bank's perspective,  
15       Petters and his associated companies are the relevant  
16       entities to examine for AML purposes.

17       Q. And did plaintiff's counsel show you anything that  
18       Mr. Petters was not in control of these other companies that  
19       are referenced on this alert?

20       A. No, sir.

21       Q. And I think --

22               MR. SCHAPER: If we'd keep that up, Mr. Herzka.

23       BY MR. SCHAPER:

24       Q. I think if we go up to the top of this document, this is  
25       an alert --

1 MR. SCHAPER: Sorry. Same page, top of 9.

2 BY MR. SCHAPER:

3 Q. This is an alert. The alerted month was April 2005. Do  
4 you see that?

5 A. Yes, sir.

6 Q. And I think that counsel for Mr. Kelley was referring to  
7 this as the first alert?

8 A. Yes, sir.

9 MR. SCHAPER: Can we go back two pages? One more  
10 page. Okay. And look at the top.

11 BY MR. SCHAPER:

12 Q. So was this actually an alert that was before what  
13 counsel was calling the first alert?

14 A. Yes, sir. This is when Searchspace went live, is my  
15 understanding.

16 MR. SCHAPER: And if we scroll out and look at  
17 both pages.

18 BY MR. SCHAPER:

19 Q. And feel free. This is -- you can look at this in your  
20 binder too. It's P-83 [sic], 6 and 7.

21 Do you recall questions about whether the early  
22 alerts that were reviewed by AML analysts made any reference  
23 to Nationwide and Enchantment? Do you recall those  
24 questions?

25 A. Are you using "enchantment" specifically? That's not

1 the name.

2 Q. Well, in this it says, "Enchantment Family Buying." Do  
3 you see a reference to that?

4 A. Yes, sir, I see that.

5 Q. And so does this alert that precedes the one that  
6 plaintiff's counsel asked you about, does this reference  
7 transaction activity with Nationwide and, as it's noted  
8 here, Enchantment Family Buying?

9 A. Yes, sir. That's correct.

10 Q. You were asked questions about whether it was unusual  
11 for billions of dollars to go into an account. What kind of  
12 business was -- did PCI tell the world that it was involved  
13 in?

14 A. Effectively a trading company, buying and selling  
15 electronic goods.

16 Q. And would it have been unusual for a business that fit  
17 that description to be doing transactions in very large  
18 dollars every month?

19 A. Not in my opinion, not in my experience.

20 Q. You were also asked whether it was -- well, strike that.

21 Might it have been unusual for some other bank  
22 customer to be doing transactions in such large amounts of  
23 money every month?

24 A. Certainly.

25 Q. So, in your view, does the review of the alerts depend

1 on the customer that you're reviewing?

2 A. Yes. It depends on the contact. So you have to look  
3 again at the nature of the business, the nature of the  
4 service the business is using at the bank, and the  
5 geographic locations that the business is operating in. All  
6 of that matters.

7 Q. Plaintiff's counsel also asked you about whether, in  
8 your view, the fact that the account alerted 39 times was  
9 unusual. And what was your response to that?

10 A. I said it was an artifact. It's a characteristic of the  
11 nature of the business. They behaved consistently with this  
12 profile.

13 Q. When you say "the nature of the business," do you mean  
14 the nature of PCI's business?

15 A. Yes, as reflected in the documents of the bank.

16 Q. So given the nature of PCI's business, was there  
17 anything unusual about the fact that it alerted that many  
18 times?

19 A. No. It's behaving consistently with the expectations of  
20 that business.

21 Q. You got some questions about whether the Federal Reserve  
22 examination process that you testified about earlier went  
23 into the execution of M&I's BSA/AML policies and procedures.  
24 Do you recall that?

25 A. I do.

1 Q. And if we can pull up DD-12. Mr. Grice, did the fed --  
2 sorry, DD-60, page 12. When the fed was doing these annual  
3 exams that you testified about earlier, did the fed look at  
4 how the bank implemented its procedures and policies?

5 A. Yes, they compared --

6 MR. ANTHONY: Objection, beyond the scope of  
7 cross.

8 MR. SCHAPER: Your Honor, plaintiff's counsel  
9 asked a question about the execution of the policies. He  
10 tried to use a sport's metaphor, asked whether the fed  
11 looked at the execution of policies. This is responsive to  
12 that.

13 MR. ANTHONY: Your Honor, I never asked a question  
14 about fed asking about execution policies, not even close.  
15 Beyond the scope and repetitious of his earlier testimony.

16 THE COURT: Sustained.

17 BY MR. SCHAPER:

18 Q. Mr. Grice, did anything that plaintiff's counsel asked  
19 you on cross-examination cause you to change your opinions  
20 as to the appropriateness of M&I's actions under the  
21 regulatory requirements and the custom and practice in the  
22 banking industry?

23 A. Not at all.

24 MR. SCHAPER: No further questions, Your Honor.

25 MR. ANTHONY: Nothing further, Your Honor.

1 THE COURT: May this witness be excused?

2 MR. SCHAPER: Yes, Your Honor.

3 THE COURT: Sir, you are excused.

4 THE WITNESS: Thank you.

5 (Witness excused)

6 THE COURT: Members of the Jury, you have seen and  
7 heard evidence pertaining to examinations conducted by the  
8 Federal Reserve Bank of Chicago. This evidence may be  
9 considered by you only for the purpose of evaluating the  
10 accuracy and credibility of the opinions and testimony of  
11 Catherine Ghiglieri and Charles Grice. The evidence may not  
12 be used for any other purpose.

13 MR. GLEESON: Judge, there's just one or two  
14 things that we would like to address to the Court outside  
15 the presence of the jury before we rest. If we may do that,  
16 we can do it at sidebar. Obviously your call whether to  
17 excuse the jury or we do it at sidebar.

18 THE COURT: I think it's appropriate for us to end  
19 the jury's day today.

20 So we will have a recess in this trial from next  
21 Monday through Thursday while the Court and the attorneys  
22 prepare the case to be given to you for deliberations. You  
23 do not need to return to the courthouse until Friday,  
24 November 4th, and that will be at the normal time. So  
25 please be in the courthouse by 8:00 and ready to enter the

1 courtroom by 8:30.

2 And I will provide you with our normal recess  
3 instruction. Members of the Jury, during this recess and  
4 every other recess, you must not discuss this case with  
5 anyone, and that includes other jurors, members of your  
6 family, people involved in the trial, or anyone else. And  
7 do not allow anyone to discuss the case with you or within  
8 your hearing.

9 Only you have been chosen as jurors in this case  
10 and only you have sworn to uphold the law. No one else has  
11 been given this important responsibility.

12 And you should not even talk among yourselves  
13 about the case before you've heard all of the evidence and  
14 the case has been submitted to you by me for your  
15 deliberations because it may affect your final decision.

16 If anyone tries to talk to you about the case,  
17 please let them know that they may not do so and let me know  
18 that they've tried to do so immediately.

19 And when I say you must not discuss the case with  
20 anyone, I also mean do not e-mail, do not text, do not blog,  
21 do not engage in any other form of written communication,  
22 oral communication, or electronic communication, as I've  
23 instructed you before.

24 Also, don't read any newspaper or other written  
25 accounts, watch any television or televised account of this

1 matter, listen to any radio program about the trial. And do  
2 not do any internet research or consult any other sources  
3 about the case, about the people in the case, or about the  
4 general subject matter of the case.

5 And, as you know, you must keep an open mind and  
6 that's one free of outside information, and only in this way  
7 will you be able to decide the case fairly, and that's based  
8 on solely -- solely on the testimony, the evidence that's  
9 been presented in the courtroom, and my instructions on the  
10 law.

11 If you were to decide the case on anything else,  
12 you would do an injustice. It would be a violation of your  
13 oath for you to base your decision on someone else's opinion  
14 or a reporter's view or any information that you acquire  
15 outside of the courtroom. So it's important for you to  
16 continue to follow these instructions.

17 Thank you for your service. You're in recess.

18 THE LAW CLERK: All rise for the jury.

19 (Jury excused)

20 **IN OPEN COURT**

21 **(JURY NOT PRESENT)**

22 THE COURT: You may be seated. So we will proceed  
23 with the charge conference and oral argument on defendant's  
24 motion for directed verdict on Thursday, November 3rd.  
25 We'll notify you about the start time of that proceeding.



1 And we plan to have closing arguments and charge the jury on  
2 November 4th, on Friday, assuming that the case is prepared  
3 for doing so. Okay?

4 Anything that you'd like to advise the Court about  
5 this matter?

6 MR. GLEESON: Judge, it's just one issue. And I  
7 don't want to shoot from the hip on it. We want to have the  
8 opportunity to file a very short brief. And it reared its  
9 head this afternoon on the cross-examination of Mr. Grice.  
10 I have no doubt --

11 THE COURT: Let me have you stop talking and have  
12 counsel in the courtroom or anybody in the courtroom to be  
13 seated while the Court is being addressed.

14 MR. GLEESON: I have no doubt the Court recalls  
15 those Petters newsletters that we offered into evidence a  
16 couple of times. And for good and sufficient reason at the  
17 time, I think the Court made its ruling.

18 But the -- you may recall the questioning here  
19 this afternoon about the -- in the closing of the alerts,  
20 the statements by the AML -- the notes by the AML analysts  
21 about nearly 20 Petters companies, which was attributed --  
22 which was characterized by Mr. Anthony in his cross as a  
23 mistake that was by the analyst that was carried forward in  
24 the subsequent closures. And that comes -- that nearly 20  
25 companies, including companies overseas, come directly out

1 of those Petters newsletters.

2 We offered them not for the truth. We said they  
3 were not hearsay. They were offered for their effect on the  
4 AML analysts. And, in fact, Mary Pesch testified that she  
5 reviewed Defendant's Exhibit 80020, for example, and if she  
6 reviewed that, she would come to the erroneous conclusion  
7 that the Petters -- that Petters owned nearly 20 companies  
8 and that they were overseas.

9 And here's the unfairness, Judge, that we want to  
10 have a chance to address in a brief written submission. The  
11 unfairness is that mistake is characterized as an error in  
12 accuracy in the AML analyst's investigation of an alert.  
13 And it's charged by the plaintiff to the account of those  
14 analysts, they screwed up and that affected the history  
15 throughout.

16 When we offered those newsletters that Mary Pesch  
17 had observed, the objection was that they were hearsay, that  
18 they were offered for the truth. And we said otherwise.  
19 The objection was sustained. It was sustained again in  
20 connection with Ms. Lindstrom's testimony.

21 And now we're in the position where the  
22 misinformation that the analysts learned about Petters by  
23 investigating Petters will be argued as a mistake by the  
24 bank as opposed to the bank having conducted a -- a  
25 certainly acceptable, if not commendable, investigation

1 having read the publications of Petters that were false, but  
2 they weren't to know they were false.

3 And they were kept out on the ground that they  
4 were -- they were objected to on the ground that they were  
5 being offered for the truth. But now the very same untruth  
6 that we were -- offered them for is being used by the  
7 plaintiff against us.

8 There's just, I think, and maybe if I -- if we  
9 have an opportunity to articulate it briefly in writing, it  
10 will be articulated better than it is right now.

11 But I think -- I don't think. I respectfully  
12 submit to the Court there's a fundamental unfairness in the  
13 use to which the defendants are going to put this nearly 20  
14 companies, given the fact that the analyst who wrote those  
15 down read that in Petters -- or said that they reviewed the  
16 very same publication in which Petters said that falsely.

17 So, you know, the -- as I say, I would like an  
18 opportunity for us to brief it because it was placed in  
19 sharp relief today. When it was offered through Lindstrom,  
20 the Court ruled that it was irrelevant and confusing to the  
21 jury.

22 Now I think -- and I'm not saying the Court was  
23 equipped with just how unconfusing it would be at the time.  
24 We would like to re-address it.

25 And I think our alternative relief requests will

1 be either the Court revisit the -- its decision to sustain  
2 the objection of our offer into evidence of those  
3 newsletters or, in the alternative, to preclude a very  
4 unfair argument that could be made by counsel for the  
5 trustee in its summation.

6 That's all I have. I would like permission to be  
7 able to do that.

8 And we are prepared to rest, I believe, right?  
9 Because I think you've addressed the scheduling concerns we  
10 wanted to address the Court to. If not -- and we still have  
11 the Rule 50 stuff.

12 I think Mr. Moheban has a couple of things to  
13 address the Court on, but we'd like to -- we haven't rested.  
14 Before we do when the jury comes back, we'd like an  
15 opportunity to address this issue of what we think is acute  
16 and pointed unfairness as a result of how this is unfolding.

17 THE COURT: Thank you, Counsel.

18 MR. MARDER: Good afternoon, Your Honor. David  
19 Marder appearing again for the plaintiff.

20 Your Honor, I believe with regard to these  
21 magazines, there have been oral arguments before the Court  
22 on at least two and maybe three occasions where these same  
23 types of arguments were made and they were rejected.

24 I think the last thing anybody needs at this point  
25 in this case is more briefing. And I think this latest

1 argument can be dispensed with very simply, which is that  
2 those magazines have nothing to do with the issue on which  
3 this witness was examined.

4 The reason the audit trail was discussed with this  
5 witness is because it is clear that the employees made a  
6 mistake. What they said was that instead of Petters  
7 Worldwide Group being a collection of 20 companies, they  
8 said that PCI was.

9 If this magazine were to come into evidence, it  
10 would not disprove that. This magazine would show that the  
11 larger Petters Group was a collection of 20 companies, but  
12 it would not correct the error which was in the audit trail,  
13 which said that PCI was a collection of 20 companies.

14 So for those reasons, Your Honor, we don't think  
15 we need to rehash this issue. And if we do, Your Honor,  
16 it's going to affect the schedule greatly because it would  
17 prevent the defendant from resting, and we would like to  
18 present now our judgment -- motion for judgment as a matter  
19 of law. And if they haven't rested, then we'd be precluded  
20 from doing that. And it seems to me that that should be  
21 addressed at the same time as the other JMOL that's going to  
22 be argued on Thursday.

23 So we think that this latest request should be  
24 rejected. We think that the defendant should rest, and that  
25 we be then allowed to present our motion for judgment as a

1 matter of law.

2 MR. GLEESON: Your Honor, just briefly on this  
3 issue that requests permission to address this briefly in  
4 writing. And the reason I say that is there are transcript  
5 cites, there are -- I want to be precise with the Court as  
6 to the arguments that were made in opposition and the basis  
7 of the ruling.

8 But just briefly in regard to what Mr. Marder just  
9 said, the -- that obviously, I'll suggest to the Court, goes  
10 only to the weight of this evidence, which is quite weighty.  
11 Because the notion that approximately 20 companies, at some  
12 times it says PCI, at least one time it says Petters,  
13 that -- we know where that came from. It came from the  
14 false statements of Tom Petters that these analysts looked  
15 at. They didn't make a mistake. What they did was  
16 correctly report the erroneous information that Petters  
17 himself had promulgated. So we ask for that opportunity.

18 THE COURT: So what would you propose -- oh,  
19 sorry. Go ahead.

20 MR. MARDER: Just as a final point to that,  
21 Your Honor. I'd just note that on repeated examination the  
22 AML analysts themselves were asked over and over again on  
23 what facts they relied upon when they made the statements in  
24 these audit trail, and they repeatedly said that they didn't  
25 remember. So the notion that these particular magazine

1 articles had an effect on them I think is a stretch.

2 But that's all we wanted -- the point we wanted to  
3 make, Your Honor.

4 MR. GLEESON: Very last word on this, Your Honor.  
5 They weren't asked about it, about this topic, the analysts.  
6 And we can brief this in five pages. So we'd request that  
7 opportunity, Your Honor.

8 THE COURT: I will grant the opportunity to brief  
9 it in five pages. I'd like the five pages to arrive on  
10 Monday. I'd like a response on Tuesday, five pages.

11 MR. GLEESON: Thank you, Judge.

12 MR. MARDER: Just so the record is clear,  
13 Your Honor, as I understand it, the defendant has not rested  
14 because of this, so are we then -- I assume that you don't  
15 want to hear at this point our motion for JMOL because they  
16 have not yet rested; is that correct?

17 THE COURT: That's correct. I can't rule on it.  
18 If you'd like to make the motion and argue it, I'm open. We  
19 have some time here. And I want to be mindful of the jury's  
20 time not only when they are at the courthouse, but when  
21 their lives are pending.

22 MR. GLEESON: Judge, we're happy to rest subject  
23 to that one determination. And then the Rule 50 motion can  
24 be made by Mr. Marder.

25 THE COURT: That's fine.

1 MR. MARDER: Your Honor, when -- you may recall  
2 that when the defendant moved for judgment as a matter of  
3 law, instead of stating the basis they simply filed a brief.

4 We do move for judgment as a matter of law on the  
5 defendant's affirmative defenses. We move under Rule 50 for  
6 judgment as a matter of law.

7 THE COURT: Counsel, please be seated during  
8 argument.

9 MR. GLEESON: I just wanted to clarify. We are  
10 happy to rest subject to it, but Mr. Moheban just had one  
11 other issue to address the Court before we actually rest.  
12 Excuse me for interrupting Mr. Marder, but I just wanted to  
13 make clear we hadn't yet rested because Mr. Moheban has an  
14 issue to raise for the Court.

15 THE COURT: Understood.

16 MR. GLEESON: Okay. Thank you, Judge.

17 MR. MARDER: Your Honor, can I proceed?

18 THE COURT: You may.

19 MR. MARDER: Thank you, Your Honor. So we have a  
20 motion for judgment as a matter of law under Rule 50 on the  
21 nonequitable affirmative defenses. And we also move for  
22 judgment on the equitable affirmative defenses.

23 As you may recall, Your Honor, when the defendants  
24 moved for their JMOL, you requested that we follow a simple  
25 procedure, which is rather than articulate it in court and



1 argue it at that time, that they have leave to file a brief.

2 And we'd ask the same thing, Your Honor, that  
3 rather than spend the Court's time articulating the  
4 argument, we have a motion for a judgment as a matter of law  
5 that we could file within the next couple hours that would  
6 lay out in detail our arguments.

7 If you'd prefer, I can articulate them now, but it  
8 seems that we ought to follow the same procedure we did last  
9 time, which is for us to make the motion, which we have, and  
10 then to articulate the grounds in the memorandum that will  
11 be filed, well, within the next few hours.

12 So I leave it to your preference, Your Honor.

13 THE COURT: Counsel.

14 MR. MOHEBAN: Your Honor, first of all, we don't  
15 object to a briefing of the plaintiff's judgment for a --  
16 motion for judgment as a matter of law. As you know, we  
17 brought a motion under Rule 50(a) at the close of the  
18 plaintiff's case.

19 At this time we bring another motion for judgment  
20 as a matter of law under Rule 50(a) based on all the  
21 evidence now that all the evidence has been submitted,  
22 subject to the one issue that's being briefed.

23 We also had in mind that we would file a motion  
24 and memorandum, and it would be limited to the issues -- or  
25 the facts that arise in the defense case. In other words,

1 we won't backtrack and cover the things that were in our  
2 initial motion. We also are prepared to file that promptly,  
3 although I don't think today because we want to have record  
4 cites. But we would be able to file it by tomorrow. We  
5 have in mind our motion could be -- our memorandum could be  
6 ten pages. And we're doing this, of course, to preserve our  
7 rights on appeal.

8 THE COURT: Understood. And instead of  
9 negotiating time frames, I appreciate hearing the parties'  
10 views on the timing and I'll issue a text-only order.

11 MR. MOHEBAN: Okay.

12 THE COURT: And everybody will be on notice of  
13 when everything is due. Okay.

14 MR. MOHEBAN: Thank you.

15 MR. MARDER: Your Honor, at least with regard to  
16 our motion for judgment as a matter of law, we're planning  
17 on filing that this evening. It's already written. I'm  
18 just going to hit send on that as soon as we leave the  
19 courtroom, if that's okay, rather than articulate it now. I  
20 see you nodding. Just for the record, that's a "yes"?

21 (Laughter)

22 THE COURT: It is a "yes" with a smile.

23 MR. MARDER: Thank you, Your Honor.

24 And then with respect to their JMOL that they  
25 already filed, you had ordered us to file our response by

1 today, so we'll go ahead and file that. It sounds like the  
2 only open issue is this additional motion they have and,  
3 again, I defer to the Court on the timing on that.

4 MR. MOHEBAN: Your Honor, this may be the last  
5 thing, famous last words, but --

6 THE COURT: You said "may."

7 (Laughter)

8 MR. MOHEBAN: I know we've submitted jury  
9 instructions some time ago, and I know we've gotten  
10 direction that you don't want a whole other set. There are  
11 a couple areas where we would just offer that this might be  
12 helpful for the Court to get some updated instructions,  
13 particularly on the issue of damages and spoliation.  
14 Because a lot has happened -- we filed those proposed jury  
15 instructions before your ruling on a number of issues that  
16 have a big impact on that.

17 So we're offering to do that. We've prepared  
18 them. It's obviously what will be useful to you. But --  
19 and on that subject matter, we think it might be useful.  
20 And we also think it might make the charge conference go  
21 faster because there are some things getting pared down, I  
22 believe.

23 THE COURT: Is there any objection from counsel,  
24 opposing counsel?

25 MR. MARDER: There is, Your Honor. You may recall

1 that we went through an exhaustive process and filed I think  
2 it was a 350-page submission on the parties' jury  
3 instructions.

4 And the -- at that time there were motions pending  
5 relating to the scope of damages, but the defendants filed  
6 their papers at their risk, knowing this was a live issue,  
7 and took a position on what the scope of damages should be.

8 The Court has already ruled on this and said that  
9 it didn't want additional jury instructions filed. We think  
10 that the parties should rest on the papers they filed rather  
11 than to have a whole other new round of proposed jury  
12 instructions.

13 THE COURT: I agree. So we will not have a new  
14 round of jury instructions.

15 Is there anything else we need to address?

16 MR. MOHEBAN: I did say "may." I just want you to  
17 remember that.

18 I want to make sure that it's just on the record,  
19 subject to the one issue that's being briefed, that the  
20 defense does rest.

21 THE COURT: Very well. I think that concludes our  
22 day and our week. Thank you, Counsel. Have a good weekend.

23 (Court adjourned at 4:44 p.m.)

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1  
2           We, Lori A. Simpson and Erin D. Drost, certify that  
3 the foregoing is a correct transcript from the record of  
proceedings in the above-entitled matter.

4           Certified by: s/ Lori A. Simpson  
5                           Lori A. Simpson, RMR, CRR

6           Certified by: s/ Erin D. Drost  
7                           Erin D. Drost, RMR, CRR  
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